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AND TO TAKE OUT

ADMINISTRATION

Containing Full Instructions

WHERE, HOW, AND WHEN TO APPLY

BY

ALMARIC RUMSEY
Barrister-at-Law
Author of "Will-Making Made Safe and Easy," &c.

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CONTAINING FULL INSTRUCTIONS

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WITH

ALPHABETICAL TABLES, FORMS OF OATHS, BONDS, ETC.
RULES FOR PERSONAL APPLICATIONS

AND

OTHER INFORMATION REQUIRED FOR OBTAINING PROBATE OR ADMINISTRATION

BY

ALMARIC RUMSEY

BARRISTER-AT-LAW

Professor of Indian Jurisprudence at King's College, London; Author of "The Moohummudan Law of Inheritance," "Al Sirájiyyah Reprinted," "Will-making made Safe and Easy," etc.

"It must be proved, and probated, and swore to, and all manner o' formalities."
Posthumous Papers of the Pickwick Club.

LONDON
JOHN HOGG, 13 PATERNOSTER ROW
1898

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Haslam & Hier Evans

PREFACE.

THE extremely cordial reception which was given to my little work "Will-making made Safe and Easy" on its publication has convinced me that the attempt to write a legal work popularly, and yet with a view to accuracy and to completeness within defined limits, was not a rash one; and I therefore venture to appear again before the public and the legal profession in order to discourse to them on a subject connected with wills. Some of my readers may be good enough to remember that "Will-making" was addressed to three classes of readers, and I address myself, practically, to the same three classes now. It may happen to any reader of these lines to have been appointed an executor by, or to be next-of-kin of, a deceased person of small means, and such a reader may readily obtain probate or letters of administration without burdening the little estate with unnecessary expenses, if he attends to the directions contained in the body of this book, and to the "Rules as to Personal Applications" reprinted in the Appendix. A clergyman may, in like manner,

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either act for himself or assist a less erudite parishioner in shaping his course correctly. Lastly, a solicitor will find here, compressed into a small compass, all the information required for ordinary cases of probate and administration, information which he would otherwise have to seek in a scattered form in much larger works. Much care has been taken as to the arrangement, both of the book generally, and of the particular facts within themselves, in order that the reader's time may be economized as much as possible. With a similar object the considerable amount of matter which lends itself to tabular treatment has not been left as I found it, but has been arranged, alphabetically or otherwise, in such manner as appeared in each instance to be most conducive to facility of reference. I feel confident that an author does not labour in vain who thus spends his individual time liberally in order to spare that which is much more important, the aggregate time of a large body of readers!

It would be a great advantage to the public if some reforming M.P. would introduce a Bill to consolidate the numerous and confused enactments as to exemptions from probate.[1]

I have the pleasure of offering my sincere thanks for kind advice and assistance given to me during the progress of my labours by C. J. Middleton, Esq.,

[1] These are so voluminous that I am only able to touch slightly upon them; see p. 16.

senior registrar of the Probate Division; R. Hankins, Esq., of the Queen's Remembrancer's Department; H. M. Chapman, Esq., district registrar at Canterbury; and my nephew, L. Ll. N. C. Rumsey, Esq., of the General Post Office.

As in the case of the earlier work above alluded to, I have thought it unnecessary to supply a table of abbreviations,[1] and, as in the case of that work, I have placed the decisions and Acts of Parliament, not in separate tables, but under the titles "Cases" and "Statutes" in the Index.

A. R.

9 Stone Buildings, Lincoln's Inn,
March 1890.

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[1] Observe, however, that "Ru. 1862" indicates the great body of rules now in force in the principal registry; "Ru. 1863," in district registries.

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ADDENDA.

June, 1895.

Note to p. 26 *et seq.* and p. 75.

The Finance Act of 1894 (57 & 58 Vict. c. 30) has, in the case of persons dying *on or after the 2nd August*, 1894, effected great changes in the Death Duties. It has abolished probate duty and several other duties, and has created a new estate duty and a new settlement estate duty.

ERRATA.

Page ix (Contents), line 6, *for* "WHO" *read* "HOW."

" 36, second line from bottom (Notes), *for* "Paxlon" *read* "Paxton."

" 113, line 17, *for* "Paxon" *read* "Paxton."

" 117, " 14 from bottom, *for*

"attorney guardian . . 103, 105"

read "attorney . . . . . 103"

"guardian . . . . . 106"

is payable thereon, the fixed duty of 30*s.* or 50*s.* is to be paid.

Accounts:

C—1. (In duplicate.) Account of property which passed at the death, but the Estate Duty whereon was not paid on the Inland Revenue Affidavit.

C—2. (In duplicate.) Account of Settlement Estate Duty.

All these forms and Form A—2 (below) can be obtained of any Collector of Inland Revenue, or by personal application at the Legacy and Succession Duty Office, Somerset House. They can also be

Appendix A.

PAGE

PRINCIPAL KINDS OF PERSONAL PROPERTY . . . 77

Appendix B.

DIVISIONS OF COUNTIES 79

PLACES FOR APPLICATIONS UNDER 44 VICT. C. 12. SS. 22–26

ADDENDA.

June, 1895.

Note to p. 26 *et seq.* and p. 75.

The Finance Act of 1894 (57 & 58 Vict. c. 30) has, in the case of persons dying *on or after the 2nd August*, 1894, effected great changes in the Death Duties. It has abolished probate duty and several other duties, and has created a new estate duty and a new settlement estate duty.

Forms of Affidavits and Accounts have been issued under this Act; those most likely to be required are the following:

Affidavits:

A—1. Inland Revenue Affidavit for Probate or Administration, except where A—4 or B—1 is applicable.

No. 17. Summary of Duty and Interest: To accompany Form A—1.

A—4. Inland Revenue Affidavit where the whole of the estate consists exclusively of personal property under the Deceased's will or intestacy, situate in the United Kingdom, except where B—1 is applicable.

No. 16. Summary of Duty or Interest: To accompany Form A—4.

B—1. Inland Revenue Affidavit where the *Gross* principal value of the property, real and personal, in respect of which Estate Duty is leviable on the death of the deceased, *exclusive* of property settled otherwise than by the will of the deceased, does not exceed £500, and, if any Estate Duty is payable thereon, the fixed duty of 30*s.* or 50*s.* is to be paid.

Accounts:

C—1. (In duplicate.) Account of property which passed at the death, but the Estate Duty whereon was not paid on the Inland Revenue Affidavit.

C—2. (In duplicate.) Account of Settlement Estate Duty.

All these forms and Form A—2 (below) can be obtained of any Collector of Inland Revenue, or by personal application at the Legacy and Succession Duty Office, Somerset House. They can also be

obtained at any Money Order Post Office outside the Metropolitan Postal District.

The executor or administrator should also obtain Form A—2 (Inland Revenue Instructions as to Estate Duty). These Instructions contain full details as to rates of Duty, time and mode of payment, &c.

The executor or administrator must carefully fill in the affidavit and accounts; but the only duty he is bound to pay is Estate Duty on personal property (wheresoever situate) of which the deceased was competent to dispose at his death (either by virtue of his ownership or by virtue of a general power of appointment). This duty he must be prepared to pay on delivery of the Inland Revenue affidavit.

Note to p. 58.

The Colonial Probates Act, 1892 (55 Vict. c. 6) provides for the sealing of probates and letters of administration granted by the Courts of British Possessions to which the Act applies, so as to give them the same effect as if granted by a Court of Probate in the United Kingdom.

Page 85.—List of Places for Applications, &c.:

Strike out—Bishop Auckland, Blandford, Bodmin, Bradford-on-Avon, Brighouse, Buckingham, Campden, Carmarthen, Conway, Crewkerne, Daventry, Denbigh, Durham, Eye, Faringdon, Hexham, Ironbridge, Knaresborough, Llandaff, Llangefni, Newnham, Newton Abbot, North Walsham, Odiham, Ormskirk, Pontypool, Redbridge, Royston, Runcorn, Ruthin, Shaftesbury, Sherborne, St. Asaph, Stockport, Stoke-on-Trent, Stony Stratford, Ware, Warminster, Wells, Welshpool, Williton, Witney, Wotton-under-Edge.

Insert—Aberayron, Aberdare, Acton, Aldershot, Bakewell, Basingstoke, Blakeney, Bournemouth, Builth, Chapel-en-le-Frith, Croydon, Enfield, Frongoch, Gillingham, Guildford, Hartlepool (West), Hatfield, High Barnet, Kilburn, Knighton, Launceston, Leighton Buzzard, Lewisham, Leytonstone, Llanidloes, Machynlleth, Madeley, Middlesborough, Neath, Okehampton, Orpington, Parracombe, Pontypridd, Presteign, Rochester, Ryde, Sawbridgeworth, Southport, Staines, St. Albans, Stratford, Swindon, Tipton, Tregaron, Trowbridge, Uxbridge, Watford, Wavertree, Wickwar, Windsor, Woolwich, Worthing.

TERMS IN COMMON USE.

The following words and expressions are used frequently, and may therefore with advantage be explained here :—

Testator.—A man who makes a will; but, generally, whatever is stated as to a testator applies also to a—

Testatrix.—A woman who makes, &c.

Intestate.—A person who dies and leaves no will.

Legatee.—A person to whom personal property is left by will.

Legatee, residuary.—A person to whom, after other dispositions, a testator leaves the rest of his personal property.

Real property.—All property that is not personal.

Personal property.—Generally, leasehold land *and* property not consisting of land. A list of the principal kinds is given later.[1]

Will.—Generally, a disposition of property to take effect only after death of person making it.

Codicil.—Generally, an instrument making additions to, or alterations in the provisions of, a will.

Executor.—A person appointed to prove a will and carry out its provisions.

Administrator.—A person appointed to carry out the provisions of a will, or to distribute the personal property of a deceased person, according to law, when there is no executor.

Probate.—An order or authority of the Court, declaring the validity of a will, and confirming the appointment of an executor.

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[1] See Appendix A., p. 77.

Administration.—In a wide sense, the management and distribution of personal property by an executor or administrator; in a narrower sense, the management, &c., by an administrator. N.B.—The word "administration" is often used, for brevity, in the sense of letters of administration (defined below).

Administration, letters of.—An order or authority of the Court, appointing a person administrator (see this word defined above).

Estate, or *Estate and effects.*—In connection with probate and administration, the whole personal property of a deceased testator or intestate.

Citation.—As used in this work, a document from the Probate Division calling upon a person to appear, or to perform some act.

Affidavit.—An oath of which the words are in writing, as distinguished from oral swearing.

THE

WAY TO PROVE A WILL, &c.

Preliminary Remarks.

THE words "probate" and "prove" are applicable, strictly speaking, only where there is an executor who acts.[1] Where there is no such person, the Court, if there is a will, grants letters of administration with the will annexed,[2] and the words mentioned above are then inappropriate. Unfortunately, they are sometimes used in such cases, so that some confusion may arise. In these pages we shall always use them in the strict sense.

Whatever is stated in this work with respect to a will may, generally, be assumed to apply equally to a codicil.

We shall, in general, use the words "executor" and "administrator" in the singular; but, where there is no indication to the contrary, a statement as to one

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[1] See *per Cur.* in In the Goods of Oliphant, 30 L. J., N. S., P. M. & A. 82, 83, "not entitled to probate, *but* to administration with the will annexed;" see, further, as to this kind of administration, p. 32, &c.

[2] See p. 32.

such person may be understood to apply equally to several.

Any statement as to probate or administration must be understood to apply only to probate, &c., in common form, as probate, &c., in solemn form is not within the limits of this work.[1]

Probate: Of what Wills, 14; Where, 17; How, 24; When, 30.

Probate under 44 Vict. c. 12, ss. 33–36, and limited or special probate, will be mentioned later.[2] Generally, a will of personal property in England[3] must be proved in England by the executor, if any, whether it deals also with real property or not,[4] whether it is made in exercise of a power or not, and, if made in exercise of a power, whether it is made by a married woman or not.[5] This statement extends to real property which, by an instrument creating a power under which the will was made, is directed to be sold,[6] and to property held in trust for a married woman's separate use.[7] A will

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[1] "Common form" is where a will is accepted as validly executed, &c., without the necessity of calling the witnesses, or one of them, to prove its execution; "solemn form" is the converse of this.

[2] See pp. 30, 51.

It must be remembered that this includes Wales; see p. 19 for meaning of "personal property," see p. ix.

[4] Netter *v.* Brett, Cro. Car. 391, 395; Partridge's case, 2 Salk. [552]; but not if it *merely* gives legacies "out of real estate"; *per Cur.* in Tucker *v.* Phipps, 3 Atk. [359], [361].

[5] Tatnall *v.* Hankey, 2 Moo. P. C. C. 342; *per Cur.* in Goldsworthy *v.* Crossley, 4 Ha. 140, 144, 145.

[6] In the Goods of Gunn, L. R. 9 P. D. 242.

[7] Brownrigg *v.* Pike L R. 7 P. D. 61.

dealing only with real property, generally, may be proved by the executor, if any,[1] but not if made by a married woman under a power, even if she directs a sale, so that the property will ultimately become personal.[2] A will which does nothing but appoint an executor must be proved like any other will.[3]

If a testator had no personal property in England, the will cannot, generally, be proved in England;[4] if he had personal property abroad and *also* in England, it must be proved in England.[5]

It has been said that a will appointing guardians (i.e., *merely* appointing guardians) need not be proved.[6] This means that there need not be administration with the will annexed; for, as we have seen, a will must be proved even if it merely appoints an executor.[7]

If an executor does not prove,[8] he has no ownership in the property,[9] and cannot bring an action[10] or get testator's money paid to him out of court;[11] and he is

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[1] *Per Cur.* in Netter *v.* Brett, *ubi sup.*; *per Cur.* in In the Goods of Tomlinson, L. R. 6 P. D. 209, 210.

[2] In the Goods of Tomlinson, *ubi sup.*

[3] Godolph. Orphans' Legacy, pt. ii. c. v. 1; approved *per Cur.* in In the Goods of Jordan, L. R. 1 P. & D. 555, and in Brownrigg *v.* Pike, L. R. 7 P. D. 61, 64.

[4] In the Goods of Coode, L. R. 1 P. & D. 449.

[5] See In the Goods of Harris, L. R. 2 P. & D. 83.

[6] *Per Cur.* in Gilliat *v.* Gilliat and Hatfield, 3 Phillim. 222.

[7] See above.

[8] An executor can renounce if he likes; see p. 42, &c. The statement here made in the text explains, in a general way, what we mean by saying that a will "must" be proved.

Pinney *v.* Pinney, 8 B. & C. 335.

[10] See p. 54.

[11] The author has recently met with this in his own practice.

subject to penalties, &c., for having taken possession unless he proves within a certain time.[1]

If a will gives property by reference to other documents, they must be proved with it.[2]

Some kinds of property are, or may be, exempt from probate, generally within a particular limit as to value. The subject is too long to be treated fully here, but the following are among the persons benefited:—Officers and others in the Royal Navy (including R.N. Reserve and Naval Coast Volunteers);[3] merchant seamen and apprentices;[4] officers and soldiers of H.M. Army;[5] superannuated civil servants;[6] (apparently) persons insured in the Customs Annuity and Benevolent Fund, so far as regards the insurance money;[7] various classes of persons of small means, such

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[1] 55 Geo. III. c. 184, s. 37; see also p. 31.

[2] Among numerous cases, In the Goods of Durham, 4 No. of Ca. 365.

[3] 28 & 29 Vict. c. 72, s. 5 (no limit); c. 111, s. 6 (not exceeding £100).

[4] 17 & 18 Vict. c. 104, ss. 199, 200 (not exceeding £50); 19 & 20 Vict. c. 41, s. 5 (same limit).

[5] 11 Geo. IV. & 1 Will. IV. c. 41, s. 5 (not exceeding £50; repealed *except* as to pensions and prize-money by 26 & 27 Vict. c. 57, s. 3); 2 & 3 Will. IV. c. 53, s. 26 (no limit; relates to foreigners in British service); 27 & 28 Vict. c. 36, s. 3 (not exceeding £50; repealing 2 & 3 Will. IV. c. 53, s. 25, erroneously cited as still in force in Tr. & Co. Prob. Prac. 28).

[6] 50 & 51 Vict. c. 67, s. 8 (not exceeding £100).

[7] In *Re* Rowsell (unreported; mentioned in Att.-Gen. *v.* Abdy, 1 Hurl. & Colt. 266, 297) such insurance money was held to be free from *legacy* duty, as not being actual property of the deceased hence it seems that it must be free from probate duty (no limit). The C. A. and B. Fund is a species of insurance office, established under 56 Geo. III. c. lxxiii., for the Customs service. The "pound-

as depositors in ordinary savings banks, members of industrial and provident societies, &c.;[1] (apparently) Post Office Savings Bank depositors, as regards sums paid by the Postmaster-General after depositor's death, in pursuance of a nomination made in his lifetime.[2]

Probate in England (including Wales) is granted only by the Probate, Divorce, and Admiralty Division of the High Court of Justice,[3] generally called, in this work, the "Probate Division." Probate has the effect of authenticating the will, and it is evidence of the character of the executor,[4] who, however, is appointed directly or indirectly by the testator.[5]

The principal registry of the Probate Division is in London; the rest of England and Wales is divided into forty districts, each having a "district registry."[6]

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age" out of the salaries for its support (erroneously stated to be still payable in Tr. & Co. Prob. Prac. 40) was abolished in 1871 by 34 & 35 Vict. c. 103, s. 18.

[1] A useful enumeration will be found in Tr. & Co. Prob. Prac. 30, &c.

[2] See Regulations of the Post Office Savings Bank, 44 (not exceeding £100).

[3] 20 & 21 Vict. c. 77, s. 4, as affected by 36 & 37 Vict. c. 66, s. 34; and see Priestman *v.* Thomas, p. 56. The later Act transferred this duty to the Probate Division, and, by S. A. s. 18, the President of that Division has many of the powers formerly belonging to the Judge of the Court of Probate. As to Wales being included, see the words "England and Wales" in sched. A. to the earlier Act.

[4] *Per Cur.* in Matson *v.* Swift, 18 Bea. 368, 378.

[5] *Per Cur.* in Woolley *v.* Clark, 5 Barn. & Ald. 744; and see Godolph. Orph. Leg. pt. ii. c. 12. As to administrator being appointed by the Court, see p. 33.

[6] 20 & 21 Vict. c. 77, s. 13.

An original application[1] for probate may be made either to the principal registry *or* to a district registry if it appears by the affidavit of the applicant or one of the applicants that testator had a "fixed place of abode" in that district at the time of his death;[2] otherwise it *must* be made to the principal registry.[3] Application for a second or subsequent grant must be made to the same registry as the first, and no affidavit as to "fixed place of abode" can be required.[4] When an affidavit as to "fixed place," &c., has been made and probate granted, the probate extends to all parts of England,[5] and holds good even if it appears afterwards that there was no such fixed place of abode. Even if there is a defective affidavit, or no affidavit at all, the probate discharges and protects persons "paying to or dealing with" the executor.[6]

The principal registry is at Somerset House, Strand, London, W.C. It has no district assigned to it; the parts of England not included in any district are Middlesex, Surrey, Hertfordshire, the City of London, the Western Division of Kent, the Southern Divi-

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[1] As to applications for a second, &c., grant, see below.

[2] S. A. ss. 46, 59. Proof of "fixed place of abode," usually included in affidavit called executor's oath, p. 24. It will, of course, be understood that no such proof is required in the principal registry.

[3] 20 & 21 Vict. c. 77, s. 59. *Through* in that section is clearly a mistake for *to*.

[4] 21 & 22 Vict. c. 95, s. 20. There is an exception as to grants made before 1858, which need not be further mentioned here.

[5] 20 & 21 Vict. c. 77, s. 46. Including Wales; see p. 19.

[6] S. A. & s.

sion of Essex.[1] There are no parts of Wales not included.

The several districts are constituted and defined in the schedule just referred to, but the arrangement of the schedule is not alphabetical. We shall here give a table of districts, and counties, &c., included in them, arranged in the alphabetical order of the counties, &c.[2]

TABLE A.

District Registries of Probate Division in Alpabetical Order of Counties, &c., Included in Districts.

Counties, Divisions of Counties,* &c., included in Districts.	Places of District Registries
Ainsty—*see* Yorkshire, East Riding.	
Anglesea	Bangor.
Bath—*see* Bristol and Bath.	
Bedfordshire	Northampton.
Berkshire	Oxford.
Berwick-upon-Tweed (town and county)—*see* Northumberland.	
Brecknockshire	Hereford.

[1] This will be seen from a careful examination of 20 & 21 Vict. c. 77, sched. A., which includes all Wales, and all England *except* the parts here mentioned. For meaning of "division," see note, below.

[2] A list of "Places of District Registries" in the alphabetical order of the "places" themselves will be found later; see Appendix B., p. 81, where the places printed in capitals are places of district registries.

* The "divisions" of counties mentioned in Table A. are divisions as described in 2 & 3 Will. IV. c. 64; see 20 & 21 Vict. c. 77, sched. A. The divisions are given at p. 79.

Counties, Divisions of Counties,* &c., included in Districts.	Places of District Registries.
Bristol—*see* Bristol and Bath.	
Bristol and Bath (present County Court districts)	Bristol.
Buckinghamshire	Oxford.
Cambridge (University)—*see* Cambridgeshire.	
Cambridgeshire (including University of Cambridge)	Peterborough.
Canterbury (city)—*see* Kent.	
Cardiganshire	Carmarthen.
Carmarthen (town)—*see* Carmarthenshire.	
Carmarthenshire (including town of Carmarthen)	Carmarthen.
Carnarvonshire	Bangor.
Cheshire (including city of Chester) . . .	Chester.
Chester (city)—*see* Cheshire.	
Cinque Ports[1]—*see* Kent (East division), Sussex Eastern division).	
Cornwall	Bodmin.
County Court Districts—*see* Bristol and Bath.	
Coventry (city)—*see* Warwickshire.	
Cumberland	Carlisle.
Deanery—*see* East Gower, West Gower.	
Denbighshire	St. Asaph.
Derbyshire	Derby.
Devonshire (including city of Exeter) . . .	Exeter.
Dorsetshire (including town of Poole). . .	Blandford.
Dover—*see* Cinque Ports.	
Durham (county)	Durham.
East Gower (deanery)	Carmarthen.

* The "divisions" of counties mentioned in Table A. are divisions as described in 2 & 3 Will. IV. c. 64; see 20 & 21 Vict. c. 77, sched. A. The divisions are given at p. 79.

[1] These are, in Kent (East division), Dover, Hythe, Romney, and Sandwich; in Sussex (Eastern division), Hastings, Rye, and Winchelsea.

Counties, Divisions of Counties,* &c., included in Districts.	Places of District Registries
East Riding—*see* Yorkshire.	
Essex (North division)	Ipswich.
Exeter (city)—*see* Devonshire.	
Flintshire	St. Asaph.
Glamorganshire (except deaneries of East and West Gower)	Llandaff.
Gloucester (city)—*see* Gloucestershire.	
Gloucestershire (including city of Gloucester), except present Bristol County Court district	Gloucester.
Gower—*see* East Gower, West Gower.	
Hampshire (including town of Southampton and Isle of Wight)	Winchester.
Hastings—*see* Cinque Ports.	
Haverfordwest (town)—*see* Pembrokeshire.	
Herefordshire	Hereford.
Hull—*see* Kingston-on-Hull.	
Huntingdonshire	Peterborough.
Hythe—*see* Cinque Ports.	
Isle of Wight—*see* Hampshire.	
Kent (East division, including City of Canterbury, and such of the Cinque Ports and their dependencies as are locally situate in Kent[1])	Canterbury.
Kingston-on-Hull—*see* Yorkshire, East Riding.	
Lancashire (except hundred[2] of Salford and West Derby, and City of Manchester) . . .	Lancaster.
Leicestershire	Leicester.
Lichfield (city)—*see* Staffordshire.	

* The "divisions" of counties mentioned in Table A. are divisions as described in 2 & 3 Will. IV. c. 64; see 20 & 21 Vict. c. 77, sched. A. The divisions are given at p. 79.

[1] The Cinque Ports in Kent are Dover, Hythe, Romney, and Sandwich.

[2] *Sic* in Act as printed, but Salford and West Derby are separate hundreds; see these names in their proper places.

Counties, Divisions of Counties,* &c., included in Districts.	Places of District Registries.
Lincoln (city)—*see* Lincolnshire.	
Lincolnshire (including city of Lincoln) . .	Lincoln.
Manchester (city)	Manchester.
Merionethshire	St. Asaph.
Monmouthshire	Llandaff.
Montgomeryshire	Shrewsbury.
Newcastle-on-Tyne (town and county)—*see* Northumberland.	
Norfolk (including city of Norwich) . . .	Norwich.
North Riding—*see* Yorkshire.	
Northampton (town) — *see* Northamptonshire (Southern division).	
Northamptonshire (Northern division) . .	Peterborough.
,, (Southern division, including town of Northampton)	Northampton.
Northumberland (including towns and counties of Newcastle-on-Tyne and Berwick-upon-Tweed)	Newcastle-on-Tyne.
Norwich (city)—*see* Norfolk.	
Nottingham (town)—*see* Nottinghamshire.	
Nottinghamshire (including town of Nottingham)	Nottingham.
Oxford (University)—*see* Oxfordshire.	
Oxfordshire (including University of Oxford) .	Oxford.
Pembrokeshire (including town of Haverfordwest)	Carmarthen.
Poole (town)—*see* Dorsetshire.	
Radnorshire	Hereford.
Riding—*see* Yorkshire.	
Romney—*see* Cinque Ports.	
Rutland	Leicester.
Salford (hundred)	Manchester.

* The "divisions" of counties mentioned in Table A. are divisions as described in 2 & 3 Will. IV. c. 64; see 20 & 21 Vict. c. 77, sched. A. The divisions are given at p. 79.

Counties, Divisions of Counties,* &c., included in Districts.	Place of District Registries.
Sandwich—*see* Cinque Ports.	
Shropshire	Shrewsbury.
Somersetshire (Eastern division, except present Bath County Court district, and the part in Somersetshire of present Bristol County Court district)	Wells.
Somersetshire (Western division) . . .	Taunton.
Southampton—*see* Hampshire.	
Staffordshire (including city of Lichfield) . .	Lichfield.
Suffolk (Eastern division)	Ipswich.
Suffolk (Western division)	Bury St. Edmunds.
Sussex (Eastern division, including such of the Cinque Ports and their dependencies as are locally situate in Sussex[1])	Lewes.
Sussex (Western division)	Chichester.
University—*see* Cambridge, Oxford.	
Warwickshire (including city of Coventry) . .	Birmingham
West Derby (hundred)	Liverpool.
West Gower (deanery)	Carmarthen.
West Riding—*see* Yorkshire.	
Westmoreland	Carlisle.
Wight, Isle of—*see* Hampshire.	
Wiltshire	Salisbury.
Winchelsea—*see* Cinque Ports.	
Worcester (city)—*see* Worcestershire.	
Worcestershire (including city of Worcester) .	Worcester.
York (city)—*see* Yorkshire, East Riding.	

* The "divisions" of counties mentioned in Table A. are divisions as described in 2 & 3 Will. IV. c. 64; see 20 & 21 Vict. c. 77, sched. A. The divisions are given at p. 79.

[1] The Cinque Ports in Sussex are Hastings, Rye, and Winchelsea.

Counties, Divisions of Counties,* &c., included in Districts.	Place of District Registries.
York Ainsty—*see* Ainsty.	
Yorkshire East Riding (including town and county of Kingston-on-Hull, city of York, and Ainsty)	York.
Yorkshire, North Riding	York.
Yorkshire, West Riding	Wakefield.

In cases where any city or town is a county of itself (*e.g.*, Southampton), that county is in the same district as the city or town itself.[1]

Application for probate may be made by the executor himself, or by a solicitor for him.[2]

An affidavit, called the "executor's oath," must be made by the executor in order to obtain probate in *any* registry. It must be accompanied by an account, and must contain certain statements, which will be found in forms given later.[3] It has been seen that the affi-

* The "divisions" of counties mentioned in Table A. are divisions as described in 2 & 3 Will. IV. c. 64; see 20 & 21 Vict. c. 77, sched. A. The divisions are given at p. 79.

[1] See 20 & 21 Vict. c. 77, sched. A. The cities and towns *now* having separate sheriffs, and therefore being, apparently, counties of themselves, are:—CITIES: Bristol, Canterbury, Chester, Exeter, Gloucester, Lichfield, Lincoln, Newcastle-upon-Tyne, Norwich, Worcester, York; TOWNS: Berwick-upon-Tweed, Kingston-on-Hull, Nottingham, Poole, Southampton, and (in Wales) Carmarthen, Haverfordwest.

[2] Ru. 1862, 2; 1863, 2. There are special rules and fees for "personal applications"; these are given *in extenso* later; see pp. 86, 90.

[3] See Forms of "executor's oath," p. 63, &c.

davit as to fixed place of abode is necessary in a district registry only;[1] but, when required, it is usually incorporated in the executor's oath (Forms, p. 63, &c.), so that one affidavit serves for both purposes.

The registrars may, if necessary, require further proof of identity,[2] and they may institute any inquiries, and must not allow probate to issue till all such inquiries have been answered to their satisfaction.[3]

Under certain circumstances an inventory of the estate and effects of the deceased must be furnished.

The executor's oath must be subscribed (*i.e.*, signed at the foot) and sworn by him as an affidavit, and filed in the registry;[4] the will must be "marked" (for identification) by the executor and the person before whom he is sworn.[5] A solemn affirmation may now be made instead of an oath by any person who objects to be sworn, and states, as the ground for his objection, that he has no religious belief, or that the taking of an oath is contrary to his religious belief.[6]

In addition to the "executor's oath," the person applying for probate, "or some other competent person or persons," in order that the proper probate

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[1] See p. 18.

[2] Ru. 1862, 48; 1863, 59.

[3] Ru. 1862, 3; 1863, 4. In district registries this regulation is stated to refer "more particularly" to personal applications.

[4] Ru. 1862, 47; 1863, 57.

[5] Ru. 1862, 49; 1863, 60. For enumeration of persons before whom an affidavit may be sworn—in other words, persons authorized to administer oaths—see p. 56.

[6] 51 & 52 Vict. c. 46, s. 1.

duty may be paid, must make an "affidavit for the Commissioners of Inland Revenue," accompanied by an account, and stating, generally, that the estate and effects which belonged beneficially[1] to the testator, including leaseholds for years, whether absolute or determinable on lives, consist of certain particulars, and are of a certain value, specified in such affidavit, to the best of the deponent's belief, &c. If testator died domiciled in the United Kingdom, the person applying for probate may state that fact in the affidavit, and deliver with it or annex to it a schedule of testator's debts due to persons resident in the United Kingdom, and the funeral expenses; and in such case those debts and funeral expenses will be deducted from the value of the estate and effects.[2] The debts deducted must not be either voluntary debts, expressed to be payable on testator's death, *or* debts under an instrument not *bona fide* delivered to the donee[3] three months before testator's death, *or* mortgage debts for which real property is primarily liable[4] or for which reimbursement may be claimed from any of testator's real property, "or from any other estate

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[1] *I.e.*, not held by him as a trustee for others, but held either by him for his own benefit, or by others as trustees for him.

[2] 55 Geo. III. c. 184, s. 38, as modified by 43 Vict. c. 14, s. 10, and 44 Vict. c. 12, s. 28. It must be remembered that the expression "estate and effects" here means the personal property, and does not include the real. As to meaning of these expressions, see p. xi.

[3] *I.e.*, the person to whom the "instrument" is given.

[4] *E.g.*, debts secured by mortgage of freehold land; see 17 & 18 Vict. c. 113.

or person;"[1] but they may be mortgage debts on leasehold property of testator if that property is "the sole security by way of mortgage" for them.[2] The funeral expenses must be only such as are "allowable as reasonable funeral expenses according to law."[3] Forms for this affidavit are to be provided by the Commissioners of Inland Revenue.[4]

An executor cannot obtain probate without producing the affidavit for the Commissioners of Inland Revenue,[5] and he may be put to much inconvenience if he takes possession without probate.[6]

Lastly, the executor has to pay the probate duty;[7] if there have been several devolutions, he must pay as many probate duties.[8] Probate is then granted, and a copy of the will, called the "probate copy," or "probate,"[9] is given to him. It is engrossed on parch-

not now

[1] 44 Vict. c. 12, s. 28.

[2] 31 & 32 Vict. c. 124, s. 7.

[3] 44 Vict. c. 12, s. 28.

[4] S. A. s. 29. See, further, as to these forms, p. 75.

[5] 55 Geo. III. c. 184, s. 38.

[6] See p. 31.

[7] See 44 Vict. c. 12, s. 30. Under certain circumstances credit may be given for the duty: 55 Geo. III. c. 184, s. 45.

[8] Att.-Gen. *v.* Partington, L. R. 4 E. & I. 100. This was, in fact, a case of two devolutions by intestacy, but the principle applies equally to any number of devolutions, whether by intestacy or by will.

[9] Strictly speaking, the official document annexed would seem to be the "probate," and the copy of the will the "probate copy" (see Ru. 1862, 79; 1863, 93; and titles of those rules); but the two documents together are very commonly spoken of as the "probate." The executor is recommended to keep the probate

ment, and has annexed to it the grant of probate, also engrossed on parchment, and sealed with the seal of the registry. The original will is preserved in the registry; but it, or a copy of it, may be inspected, and a copy of the whole or any part may be obtained by any person on payment of certain fees.[1] The executor is now clothed with his full character, and is competent to perform all his duties.

Probate duty is payable on real property "converted" by a direction or contract to sell, in the same manner as on personal property.[2] And it is payable on a registered British ship, even if out of the United Kingdom at time of death.[3] There is no probate duty in the case of a common seaman, marine, or soldier who is slain or dies in the service of the Crown,[4] or (apparently) in the case of the persons excepted from probate and administration as mentioned earlier.[5]

We subjoin a table of the usual rates of probate duty.[6] The new duty for property exceeding £10,000 in value is not payable except in the case of grants made on or after June 1, 1889. This new duty and

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in some safe place, as, for instance, in the vaults of the National Safe Deposit Company.

[1] 20 & 21 Vict. c. 77, ss. 66, 69.

[2] In the Goods of Gunn, L. R. 9 P. D. 242. See S. C. p. 14, shewing that there may be probate of a will dealing with such property only.

[3] 27 & 28 Vict. c. 56, s. 4.

[4] 55 Geo. III. c. 184, sched., pt. III.

[5] See p. 16.

[6] As to deduction of funeral expenses and debts in estimating the value, see p. 26. Certain special rules will be described at p. 30 (estates not exceeding £300 in value).

the corresponding new succession duty for properties of like value will probably be called "estate duty," as that expression is used in marginal notes, &c., of the Act.

TABLE B.

Probate Duty.

(Founded on the provisions of 44 Vict. c. 12, and 52 Vict. c. 7.)

Personal Estate *not* over[1]	Amount of Duty.	Personal Estate *not* over[1]	Amount of Duty.
£	£ s. d.	£	£ s. d.
100	*none*	600	15 0 0
150	3 0 0	650	16 5 0
200	4 0 0	700	17 10 0
250	5 0 0	750	18 15 0
300	6 0 0	800	20 0 0
350	7 0 0	850	21 5 0
400	8 0 0	900	22 10 0
450	9 0 0	950	23 15 0
500	10 0 0	1,000	25 0 0
550	13 15 0		

Over £1,000 . . . . £3 for £100, and for any fractional part of £100 over any multiple of £100.

Over £10,000 . . . . £1 for £100, and for any fractional part of £100 over any multiple of £100, in addition to duty payable as above.

[1] The estate is considered "over" even if it exceed the stated sum only by shillings and pence.

Certain special rules as to probate in the case of estates not exceeding the value of £300 (which are permissive, not obligatory) may be thus described:—

They only apply to estates of persons dying on or after June 1, 1881. The value must include personal property (if any) out of the United Kingdom, and there is no deduction for debts or funeral expenses. The applicant must deliver a notice to the "proper officer of the Court" *or* to any officer of Inland Revenue appointed for the purpose, setting forth the required particulars, and must deposit 15*s.* for fees and expenses, *and*, if the value exceeds £100, 30*s.* for duty.[1] Officers of Inland Revenue may administer oaths or affirmations,[2] and may attest[3] and accept the administration bond.[4]

An alphabetical list of the places where there are offices of Inland Revenue at which applications may be made will be found later.[5]

Probate cannot be obtained generally till after seven days from testator's death, except under authority of the judge or two registrars (*one* if the application is

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[1] There is no probate duty when an estate does not exceed £100; see p. 29.

[2] As to persons authorized, *generally*, to administer oaths, &c., see p. 56.

[3] As to persons, *generally*, who may attest an administration bond, see p. 36.

[4] 44 Vict. c. 12, ss. 33–36. These provisions apply equally to administration. They apply, *mutatis mutandis*, to Ireland; the Act contains corresponding provisions as to Scotland. As to the nature, &c., of the administration bond, see pp. 32, 34, &c.

[5] See Appendix B., p. 81.

in a district registry) of the principal registry.[1] an application after three years' delay, the cause must be certified;[2] if the certificate proves unsatisfactory, further proof may be required.[3] It is, however, unwise to delay applying so long, for any person forfeits £100, besides 10 *per cent.* on the probate duty, who takes possession of or administers any part of the estate, unless he obtains probate or administration within six calendar months after testator's death, *or* two calendar months after the termination of any suit or dispute respecting the will or right of administration which may be going on four calendar months after the death.[4] And he must pay the same duty, or twice the duty, that would be payable if probate had been taken out.[5]

Several Executors, 31; No Executor, 32.

Several executors may prove a will together; if some die or renounce, the rest may prove. If probate be granted to one or more, power is reserved of making a grant (called "double" probate) to the others.[6]

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[1] Ru. 1862, 43; 1863, 51.

[2] Ru. 1862, 45; 1863, 53.

[3] *Ibid.*

[4] 55 Geo. III. c. 184, s. 37.

[5] 28 & 29 Vict. c. 104, s. 57; 44 Vict. c. 12, s. 40. It is impossible to state exactly how these Acts work together, but it is clear that, read them how we may, they render long delay very dangerous.

[6] These are matters of ordinary practice. No limit is laid down as to the number. For Form of oath on double probate, see p. 64.

If there is a will, but no willing and competent executor,[1] administration with the will annexed, not probate, is granted.[2] A person may be incompetent by reason of infancy, idiocy, lunacy, or the like,[3] but not on account of conviction for felony or attempted fraud on the estate.[4]

Administration—Preliminary, 32; Where, 33; How, 33; When, 38.

Administration under 44 Vict. c. 12, ss. 33-36, and under 36 & 37 Vict. c. 52 and 38 & 39 Vict. c. 27, and limited or special administration are mentioned elsewhere.[5]

In having to act under the provisions of a will, an administrator with the will annexed resembles an executor; in having to give a bond, commonly called an "administration bond,"[6] he resembles an ordinary administrator. We shall now treat of administrators *generally*, and our statements must be taken to apply to both kinds, except when otherwise mentioned.

An ordinary administrator is appointed if there is

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[1] Sometimes even without these circumstances; see p. 48.

[2] Even if there is a will of real property and the executor renounces: In the Goods of Jordan, L. R. 1 P. & D. 555. As to a will merely appointing guardians, see p. 15.

[3] See Godolph. Orph. Leg. pt. ii. c. 6, 2.

[4] Smethurst *v.* Tomlin and Bankes, 2 Sw. & Tr. 143 (conviction for felony). In the Goods of Hett, 6. Jur. 350 (attempted fraud).

[5] See p. 30; (estates not exceeding £300 in value); 37 (not exceeding £100 in value); 53 (limited, &c., administration).

[6] This will be described later; see p. 34. An executor does not have to give such a bond.

no valid will;[1] we have stated earlier under what circumstances an administrator with the will annexed is appointed.[2]

Administration is not granted in England unless there is property of the deceased in England.[3]

Exemptions from probate apply equally to administration.[4]

Letters of administration, like probate, are granted only by the Probate Division.[5] The details given above as to the principal and district registries, as to applying personally or by a solicitor, as to a grant extending to the whole of England and Wales, and the like, apply to administration equally with probate.[6] A grant of administration operates as the appointment of an administrator; an administrator can be appointed only by the Court.[7]

An applicant for letters of administration must make an affidavit, called the "administrator's oath." Generally, this is like an "executor's oath,"[8] but it must state why the application is necessary (that the

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[1] See Forms of administrator's oath, p. 67, &c. In the Goods of Graham, L. R. 2 P. & D. 385.

[2] See p. 13.

[3] In the Goods of Tucker, 3 Sw. & Tr. 585. "England" includes Wales, p. 19.

[4] See p. 16.

[5] As to probate, see p. 17; the references there given apply equally to administration.

[6] See p. 17, &c.; the references there given apply, *mutatis mutandis*. to administration.

[7] Godolph. Orph. Leg. pt. ii. c. 12. An *executor* is appointed by testator; see p. 17.

[8] As to executor's oath, see p. 24, &c.

deceased died intestate, or made a will without appointing an executor, or the like),[1] and must "clear off all persons having a prior right to the grant" (*i.e.*, shew that there are none), and shew (if it is so) that the applicant is the only next-of-kin, or one of the next-of-kin. In administrations of a "special character," the recitals (*i.e.*, the narrative of the circumstances which have caused the application) must be framed according to the facts of the case.[2]

The regulations as to further proof of identity, inquiries by the registrar, subscribing the "oath," "marking" the will, and affirming instead of swearing, are the same in administration as in probate.[3]

Under certain circumstances a declaration or an inventory of the estate and effects of the deceased must be furnished.

An affidavit for the Commissioners of Inland Revenue must be made, as in the case of probate.[4]

By the administration bond[5] the administrator binds himself, under a penalty, to duly collect, get in, and administer the personal estate of the deceased[6]

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[1] See Forms of administrator's oath, p. 67, &c.

[2] Ru. 1862, 37; 1863, 43. See further as to special administration, p. 52. As to the order in which relations, &c., have a right to the grant, see p. 43, &c.

[3] As to these matters in relation to probate, see p. 25; the references there given apply here also, *mutatis mutandis*.

[4] As to the nature, &c., of this affidavit, see pp. 25–27.

[5] Mentioned at p. 32.

[6] 20 & 21 Vict. c. 77, s. 81, as affected by 36 & 37 Vict. c. 66, s. 31, &c. As to bond by a guarantee society, see In the Goods of G. Harver, Harver *v.* Harver (Crook intervening), L. R. 14 P. D. 81. The husband need not concur in a married woman's bond: In the Goods of Ayres, L. R. 8 P. D. 168.

(Forms, pp. 71, 73). The bond may be with or without sureties, according to circumstances.

Sureties may be dispensed with if the Court thinks fit—*e.g.*, if the property has been transferred to the Accountant-General of the Court of Chancery[1]—especially if there is difficulty in finding any, and if the administrator is entitled to the whole estate for his own benefit but not merely because there is difficulty, &c , even if a receiver has been appointed by the Chancery Division ;[3] and not where the administrator becomes a lunatic, and his committee applies for payment of money out of court for his (the administrator's) use and benefit.[4]

Only one surety is required to the bond of the husband or his "representative."[5] In a district registry one surety only "may be taken" where the property is under the value of £50;[6] two are required in other cases.[7] In all registries two are required (except in the case of the husband, &c.) where there is limited or special administration.[8]

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[1] Cleverly *v.* Gladdish, In the goods of Cleverly, 2 Sw. & Tr. 335. There is no such officer now, but the decision must be read *mutatis mutandis.*

[2] In the Goods of De la Farque, *ibid.* 631.

[3] Jackson *v.* Jackson, L. R. 1 P. & D. 12.

[4] In the Goods of Morris, L. R. 15 P. D. 9.

[5] Ru. 1862, 39; 1863, 46; In the Goods of Noel, 4 Hagg. 207.

[6] Ru. 1863, 45.

[7] There is no actual rule, apparently, for the *principal* registry, but two seem to be generally required; see Forms of administration bonds, pp. 71, 73. For limited, &c., administration, generally, see p. 52.

[8] Ru. 1862, 39; 1863, 46; as to the husband, &c., see above.

Where deceased was a Scotchman, and there was difficulty in finding two sureties in England to take all the responsibility, the Court allowed a bond with "four or five" sureties.[1]

Sureties, generally, must be resident in England;[2] but under special circumstances they may be resident out of England.[3] The sureties must justify[4] under certain circumstances mentioned in the Rules of Court;[5] and may be ordered to justify if the property requires special protection.[6] To "justify"[7] is to shew by affidavit that the sureties have, together, enough property to make the bond effective—generally twice the value.

An administration bond is generally in double the gross value of the estate; but it may be reduced,[8] or there may be more bonds than one.[9]

The witness to the bond must be generally an officer of the principal registry, *or* a district registrar or his chief clerk, *or* a commissioner or other person

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[1] Herbert *v.* Sheill, 3 Sw. & Tr. 479.

[2] S. C.

[3] In the Goods of Houston, L. R. 1 P. & D. 85 (no debts); In the Goods of Uzuaga, L. R. 4 P. D. 229 (all debts paid).

[4] For meaning of this word, see below.

[5] Ru. 1862, 42; 1863, 49.

[6] Coppin *v.* Dillon, 4 Hagg. 361; In the Goods of Campbell, 2 Hagg. 555; In the Goods of Noel, 4 Hagg. 207; John *v.* Bradbury, L. R. 1 P. & D. 245.

[7] In the place of "justifying sureties," the expression "justifying security" or "justifying securities" is sometimes used.

[8] 20 & 21 Vict. c. 77, s. 82; and see In the Goods of Gent, 1 Sw. & Tr. 54; In the Goods of Paxlon, L. R. 14 P. D. 40.

[9] S. A. & s.

authorized to administer oaths under 20 & 21 Vict. c. 77; *not* the solicitor or agent of the person executing it.[1] The administrator's signature, if not taken in the registry, must be attested by the person administering the oath.[2]

Lastly, probate duty must be paid;[3] administration is then granted. If the will is annexed, a copy is delivered to the administrator, with an annexed official document, called a grant of letters of administration; if there is no will, the grant is delivered alone.[4]

The provisions as to copies, &c., are, *mutatis mutandis*, the same as in the case of probate.[5]

The provisions mentioned earlier as to probate when the estate does not exceed £300 in value apply equally to administration.[6]

The provisions mentioned above as to estates not exceeding £100 in value[7] (which are permissive, not obligatory) are as follows:—

The applicant or applicants (widow, or one or more children, of an intestate man; *or* one or more children

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[1] See that Act, s. 27, and Ru. referred to below. For persons authorized to administer oaths, generally, see p. 56.

[2] Ru. 1862, 38; 1863, 44. For particular cases of small estates, see pp. 30, 38.

[3] The expression "probate duty" is merely popular; the duty is payable on administration in the same way as probate; see 44 Vict. c. 12, s. 27, &c.

[4] See 20 & 21 Vict. c. 77, ss. 66, 69. The grant should be kept in some safe place, *e.g.*, the vaults of the National Safe Deposit Company.

[5] 20 & 21 Vict. c. 77, s. 69; as to probate, see p. 28.

[6] See p. 30. [7] See p. 32.

of an intestate widow) must reside more than three miles from the probate registry having jurisdiction in the matter; the application is made to the registrar of the county court within the district of which the intestate had his fixed place of abode at the time of his death. The "said" registrar fills up the papers required by the Probate Division, swears the applicant[1] and attests the administration bond,[2] and transmits the documents to the probate registrar,[3] who makes out and seals letters of administration, and sends them to the "said" county court registrar, to be delivered by him to the applicant on payment of a fee of 5*s.* if the value of the estate is £20 or under, and the further sum of 1*s.* for every £10 or fraction of £10 over £20. The county court registrars may administer oaths, &c.[4]

The law respecting administration with the will annexed agrees, as to time, with that respecting probate; the penalties for not administering are the same.[5] The law respecting ordinary administration is the same, except that the shortest time allowed is fourteen days instead of seven.[6]

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[1] As to persons authorized, *generally*, to administer oaths, see p. 56.

[2] As to persons, *generally*, who may attest an administration bond, see p. 36.

[3] As to these words, see "The Probate Registry," &c. above.

[4] 36 & 37 Vict. c. 52; 38 & 39 Vict. c. 27; applicable, *mutatis mutandis*, to Ireland: see former Act, s. 7.

[5] See p. 30; the references there given apply here, *mutatis mutandis*.

[6] Ru. 1862, 44; 1863, 52.

Who shall be Executor, 39; Renunciation of Probate, 42.[1]

An executor is usually appointed expressly and absolutely by the simple words "I appoint so-and-so my executor," but the following are instances where it is not so. They are only mentioned briefly, as in any such case it will generally be wise for our readers not to rely on their own study of these pages, but to seek professional advice.

A person becomes executor "according to the tenor" if testator gives him an executor's powers and duties, either by directing him to pay his debts, funeral expenses, legacies, &c., or by using words which amount to the same thing—*e.g.*, committing his goods to his administration.[2] An executor according to the tenor takes out probate like other executors.[3]

Succession or transmission in the case of an executor by the tenor will be mentioned later.[4]

A testator may authorize another person, either by express words or otherwise, to appoint an executor,

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[1] With this is included conduct equivalent to renunciation.

[2] In the Goods of Manly, 3 Sw. & Tr. 56; In the Goods of Fry, 1 Hagg. 80; In the Goods of Adamson, L. R. 3 P. & D. 253; Godolph. Orph. Leg. pt. ii. c. 5, s. 3; Pemberton *v.* Cony, 1 Cro. Eliz. 164; In the Goods of Lush, L. R. 13 P. D. 20; In the Goods of Baylis, L. R. 1 P. & D. 21; *per Cur.* in In the Goods of Lowry, L. R. 3 P. & D. 157, 159; In the Goods of Brown, L. R. 2 P. & D. 110; Grant *v.* Leslie, 3 Phillim. 116. There cannot be an *administrator* according to the tenor: see p. 48.

[3] See above-mentioned cases, generally.

[4] See p. 40.

who will then be executor by "nomination."[1] A person authorized to appoint "some one" may appoint himself.[2] An executor by nomination proves the will, like other executors.[3]

A person becomes executor of a will if he proves the will of the only or surviving executor of that will,[4] provided that both wills are proved in the same country.[5] Such a person is an executor by "succession" or "transmission." The doctrine extends to the executor of an executor according to the tenor.[6] To be a "surviving executor" for this purpose it is sufficient to be the survivor of those who have actually proved.[7] An executor by succession or transmission does not prove the first will.[8] Succession or transmission is not interrupted by a grant to an attorney.[9]

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[1] Jackson and Gill *v.* Paulet, 2 Robert. 344; In the Goods of Ryder, 2 Sw. & Tr. 127; In the Goods of Cringan, 1 Hagg. 548.

[2] In the Goods of Ryder, *ubi sup.*

[3] See the above-mentioned cases, generally.

[4] Bro. Abr., Administrators and Administracion, 7; *per Cur.* in In the Goods of Perry, 2 Curt. 655 (as to an only executor); Fowler *v.* Richards, 5 Russ. 39; In the Goods of Beer, 2 Robert. 349 (as to a surviving executor). There is no succession, &c., if there is a substituted executor; see p. 41, *note.*

[5] Twyford *v.* Trail, 7 Sim. 92; In the Goods of Gaynor, L. R. 1 P. & D. 723.

[6] In the Goods of Griffin, I. R. 2 Eq. 320. As to an executor according to the tenor, generally, see p. 39.

[7] *Per Cur.* in In the Goods of Delacour, I. R. 9 Eq. 86. This is by the effect of 20 & 21 Vict. c. 77, s. 79.

[8] In the Goods of Noddings, 2 Sw. & Tr. 15, as corrected in In the Goods of Lorimer, 2 Sw. & Tr. 471; and see In the Goods of Murguia, L. R. 9 P. D. 236.

[9] In the Goods of Bayard, 1 Robert. 768; In the Goods of

Renunciation by executor of executor will be mentioned later.[1]

A testator may appoint a person to succeed another as executor, whether the first executor proves the will or not,[2] either expressly or by the words "in default of."[3] Such a person is called an executor by "substitution."[4] An executor so substituted on death must prove the will, like other executors.[5] The same holds good, no doubt, as regards an executor substituted after a fixed period (*e.g.*, ten years), though this has been denied in a well-known work.[6]

A person may become in some sort an executor by merely intermeddling with the estate; such a person is called an executor *de son tort*.[7] He "has all the liabilities, but none of the privileges," of a lawful executor,[8] and prudent persons will avoid placing themselves in such a position.

Murguia, L. R. 9 P. D. 236; for administration by attorney, generally, see p. 53.

[1] See p. 42.

[2] In the Goods of Lighton, 1 Hagg. 235; In the Goods of Johnson, 1 Sw. & Tr. 17.

[3] In the Goods of Foster, L. R. 2 P. & D. 304. These words cause a succession on death of first executor. In such a case there can be no "succession or transmission": In the Goods of Foster, *ubi sup.*

[4] S. C.; In the Goods of Lighton, *ubi sup.*

[5] See cases above mentioned, generally.

[6] See 1 Will. Ex. & Ads. (8th ed.), 387, citing Anon. Freem. Ch. 313 (S. C. 1 Ca. in Ch. 265, 11 Vin. Abr. [56], 13) but this case seems contrary to principle, and was clearly disapproved *per Cur.* in Watkins *v.* Brent, 1 M. & Cr. 97.

[7] Read's case, 5 Co. Rep. [33 b].

[8] *Per Cur.* in Carmichael *v.* Carmichael, 2 Phillips, 101, 103.

Generally, a person may renounce the office of executor after testator's death,[1] even if in testator's lifetime he agreed to accept it.[2] (Form of renunciation, p. 70.) If he neither acts nor renounces, he may be served with a citation to accept or refuse, and if he does not appear to the citation his right to probate wholly ceases, and it is granted to the person who would have been entitled if he had not been appointed.[3]

An executor cannot renounce if he has intermeddled with the estate.[4]

A renunciation once filed cannot be recalled at pleasure, for it causes the right to a grant wholly to cease;[5] but the Court, probably, can allow it to be recalled.[6] It may be withdrawn at pleasure until filed;[7] after that, it takes effect as from the day on which it was actually made.[8]

An executor by succession or transmission cannot renounce the first will and prove the second;[9] nor can

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[1] *Per Cur.* in Douglas *v.* Forrest, 4 Bing. 686, 704; Bac. Abr. Executors and Administrators, (E), 9. How the right of renunciation may be lost, see below.

[2] *Per Cur.* in Doyle *v.* Blake, 2 Sch. & Lef. 231, 239.

[3] 20 & 21 Vict. c. 77, s. 79, as modified by 21 & 22 Vict. c. 95, s. 16.

[4] See, among other cases, Mordaunt *v.* Clarke and Clarke, L. R. 1 P. & D. 592.

[5] 20 & 21 Vict. c. 77, s. 79.

[6] *Per Cur.* in In the Goods of Badenach, 3 Sw. & Tr. 465, 466, and in In the Goods of Gill, L. R. 3 P. & D. 113, 115.

[7] In the Goods of Morant, L. R. 3 P. & D. 151.

[8] Munday and Berry *v.* Slaughter, 2 Curt. 72.

[9] See In the Goods of Perry, 2 Curt. 655; Brooke *v.* Haynes

he, apparently, prove the first and renounce the second.[1]

It is probable that probate may be renounced by attorney.[2]

Who shall be Administrator, 43; Administrator under 20 & 21 Vict. c. 77, s. 73, 48; Renunciation of Administration, 50.

There are certain ordinary rules for determining who has the first right to letters of administration. Departures from these rules will be treated later.[3] Under the ordinary rules, the right accrues to wife or relations of a deceased male[4] in the following order:—

Wife.[5]

Next-of-kin (or some or one, as the Court may think fit) in order as follows:[6]—

Children.

Grandchildren.

L. R. 6 Eq. 25; *per Cur.* in In the Goods of Delacour, I. R. 9 Eq. 86.

[1] See 2 Shep. Touch. (Preston's edit.), p. 464.

[2] From analogy of administration, as to which see p. 51.

[3] See p. 46, &c.

[4] For slight variation in the case of a deceased female, see p. 45.

[5] 21 Hen. VIII. c. 5, s. 2 (s. 3 in Ruffhead's edit.); and see *per Cur.* in In the Goods of Corser, 31 L. J., N. S., P. M. & A. 170, 171. *Not* divorced wife: In the Goods of Nares, L. R. 13 P. D. 35. Wife preferred by practice of Court, though equal under Act, to next-of-kin: S. C.

[6] S. A. & s. The *order* is established by the practice of the Court,

Remoter descendants.
Father.
Mother.
Brothers and sisters.
Grandfathers and grandmothers.
Uncles, aunts, nephews, nieces (and, apparently, great-grandfathers and great-grandmothers[1]).
More distant relations; the nearest preferred.

It must be understood that the grant goes to the earliest person (or set) in the above list who is living and willing to act.[2] To find who is entitled among the "more distant relations," we count the steps or "degrees" upwards and downwards, and then add. Thus, for first cousins, the degrees are 2 up to grandfather, then 2 down, or 4 in all; for second cousins, 3 up to great-grandfather, then 3 down, or 6 in all; therefore the first cousins are the next-of-kin.

Observe that the next-of-kin for the purpose of administration are not always the same as the next-of-kin for the purpose of descent.[3]

If all the next-of-kin are minors (*i.e.*, under twenty-one), their guardian may be appointed administrator during their minority.[4] A guardian appointed by the

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[1] See 1 Will. Ex. & Adm. 431, referring to 2 Bl. Comm. 505, where, however, these relations are not actually mentioned.

[2] Not always the nearest relation; *e.g.*, grandson comes before father (see list, p. 43).

[3] This is only briefly mentioned here to prevent mistakes; a description of next-of-kin for the latter purpose is not required here, but is given in the author's "Will-making made Safe and Easy" (John Hogg, 13, Paternoster Row), Appendix A.

[4] Ru. 1862, 33–36; 1863, 39–42.

father's will is preferred to an elected guardian probably the same applies to a mother.[2] In some cases the Court appoints a guardian for the express purpose of administration, usually one of the minor's nearest relations;[3] if there are no known relations, a creditor may be appointed.[4]

In the case of a deceased female's *relations*, the same order as to right of administration is followed, but a surviving *husband* has a prior right,[5] which passes to his executor or administrator,[6] *not* to his trustee in bankruptcy.[7]

Observe that the strict letter of the law as to right of administration shews no partiality as between the sexes (except in the cases of husband and wife, and father and mother), between whole and half blood, between paternal and maternal side, or between older and younger persons in equal degrees of relationship. Out of several persons so related, all or any one or more may have the grant,[8] according to circumstances. It may, however, be taken as a general rule that one

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[1] In the Goods of Morris, 2 Sw. & Tr. 360.

[2] A mother may now appoint a guardian by deed or will; see 49 & 50 Vict. c. 27, s. 3.

[3] See Ru. 1862, 34; 1863, 40.

[4] In the Goods of Peck, 27 L. J., N. S., P. & M. 106.

[5] 29 Car. II. c. 3, s. 25; made perpetual by 1 Jac. II. c. 17, s. 5; and see Squib *v.* Wyn, 1 P. W. [378]. A divorced husband, probably, has no right; see analogy of divorced wife, p. 43, *note*.

[6] In the Goods of Harding, L. R. 2 P. & D. 394; except, apparently, where wife takes under 7 Will. IV. & 1 Vict. c. 26, s. 33; see In the Goods of Councell, L. R. 2 P. & D. 14.

[7] In the Goods of Turner, L. R. 12 P. D. 18.

[8] See p. 43, "or some or one," &c.

or more cannot have it without giving notice to the others, so that they may apply if they like; but that, as a matter of practice, a man of business is preferred to another man,[1] a male to a female,[2] an older to a younger person,[3] a person having the largest interest or favoured by those who have it to another person,[4] whole blood to half blood,[5] the first to a later applicant.[6]

Residuary legatees (even if there is no residue) or universal legatees are preferred even to next-of-kin.[7] A residuary legatee in remainder may have the grant if the residuary legatee for life cannot take it.[8] On a sole residuary legatee's death, his executor or administrator may be appointed;[9] the guardian of a minor residuary legatee may be appointed administrator during his minority.[10]

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[1] Williams *v.* Wilkins, 2 Phillim. 100, 101.

[2] Iredale *v.* Ford, 1 Sw. & Tr. 306.

[3] Warwick *v.* Greville, 1 Phillim. 123, 125.

[4] S. C.; Iredale *v.* Ford, *ubi sup.*

[5] Mercer *v.* Morland, 2 Lee, 499, 500.

[6] Cordeux *v.* Traster, 4 Sw. & Tr. 48.

[7] Also to other legatees and annuitants; as to residuary legatees, see, among other cases, Atkinson *v.* Barnard, 2 Phillim. 316; as to universal legatee, In the Goods of Oliphant, 1 Sw. & Tr. 525.

[8] Dampier and Dampier *v.* Colson, 2 Phillim. 54.

[9] See Wetdrill *v.* Wright, 2 Phillim. 243; so, also, if the residuary legatee was executor; see, among other cases, In the Goods of Ditchfield, L. R. 2 P. & D. 152.

[10] Fawkener and Freemantle *v.* Jordan, 2 Lee, 327; In the Goods of Poyer, Deane, 184. In these cases the residuary legatee was sole next-of-kin, but the guardian, apparently, would have been

There is some doubt whether this right of administration extends to a residuary legatee *in trust;* it certainly does not if he was also appointed executor and that appointment is revoked.[1]

It seems clear that a residuary legatee is preferred to testator's wife,[2] for a grant may be made to the wife, limited until infant residuary legatees attain twenty-one;[3] probably this applies equally to a husband.[4]

When there is no residuary legatee, a creditor may have the grant before the next-of-kin if the latter have no interest—*e.g.*, if the estate is insolvent.[5] Generally, a creditor may have a grant if there is no one else, "according to law," to take it.[6]

If testator directs that his personal estate may be used in carrying on his business after his death, a person becoming a creditor of the business after the death may have a grant.[7] Similarly, an undertaker, or a person who has paid the funeral expenses, may

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appointed even without that circumstance. See also *per Cur.* in In the Goods of Gill, L. R. 3 P. & D. 113, 115.

[1] In the Goods of Poyer, Deane, 184.

[2] The authors of a well-known work seem to think this has been expressly decided: see Tr. & Co. Prob. Prac. 70; but in the case on which they rely (Cull *v.* Guillermey, 12 Jur. 966) there is nothing to shew that there was a wife.

[3] See In the Goods of Smith, 27 L. J., N. S., P. & M. 105.

[4] See In the Goods of Bailey, 2 Sw. & Tr. 135.

[5] *Per Cur.* in West and Smith *v.* Willby, 1 Phillim. 374, 381 Fairland *v.* Percy, L. R. 3 P. & D. 217 (equitable creditor).

[6] *Per Cur.* in Dimes *v.* Cornwell, 2 Robert. 142.

[7] Fairland *v.* Percy, *ubi sup.*

have a grant as a creditor;[1] in all these cases justifying sureties may be required.[2]

If there be no residuary legatee, next-of-kin, nor creditor, the grant may be made to a legatee,[3] or to "one of the principal legatees," if there are several.[4]

The indirect ways, &c., in which a man may become an executor[5] are inapplicable to an administrator. In some instances this follows as a matter of course from the latter being appointed by the Court and not by the testator;[6] in others it is shewn by direct authority.[7]

Apart from the ordinary departures from the usual order which have been described,[8] the Court has special statutory power to depart from it when there is no will of personal estate, or no executor appointed and willing and competent to take probate, *or* when the executor, at the time of testator's death, resides out of the United Kingdom, and "in any such case"

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[1] *Per Cur.* in S. C. 222; Newcombe *v.* Beloe, L. R. 1 P. & D. 314.

[2] Fairland *v.* Percy, *ubi sup.*; Newcombe *v.* Beloe, *ubi sup.* For meaning of "justify," see p. 36.

[3] See *per Cur.* in In the Goods of Watson, 1 Sw. & Tr. 110, 111.

[4] Hurrell *v.* Hurrell, 1 Lee, 168.

[5] See p. 39, &c.

[6] See p. 33. For this reason there can be no administrator according to the tenor, by nomination, or by substitution.

[7] As to succession or transmission, Tingrey *v.* Brown, 1 Bos. & Pul. 310; Bro. Abr. Administrators and Administracion, 7; Com. Dig. Administrator (B. 6); as to *de son tort*, Godolph. Orph. Leg. pt. ii. c. 8, 2.

[8] See p. 46, &c.

the Court thinks it necessary or convenient, by reason of insolvency of the deceased's estate, or "other special circumstances," to appoint an administrator who is not the person naturally entitled.[1] This does not authorize the Court to grant administration to the next-of-kin instead of the wife, for they have *naturally* equal rights;[2] nor to grant general administration instead of administration limited till a minor (*i.e.*, a person under 21) comes of age, as that would be a substitution not merely of one person, but of one kind of administration, for another;[3] nor to grant administration to a person not next-of-kin together with the widow, this being considered contrary to the Act of Henry VIII.[4]

It is impossible within our limits to enumerate the numerous kinds of "special circumstances" in which the Court will act under this section. It may be stated, however, that it will only do so on evidence that it is really desirable for the protection of the property by reason of absence or unfitness of the persons having a natural right to the grant.[5] When

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[1] 20 & 21 Vict. c. 77, s. 73. The administration *may* be limited (*ibid.*); as it does not seem to be *necessarily* limited, it is treated separately here, and not placed under the head of "Limited or Special Administration" at p. 52.

[2] In the Goods of Corser, 31 L. J., N. S., P. M. & A. 170; and see p. 43.

[3] In the Goods of Smith, 27 L. J., N. S., P. & M. 105.

[4] In the Goods of Browning, 31 L. J., N. S., P. M. & A. 161. But a person not next-of-kin was appointed together with one of the next-of-kin in In the Goods of Grundy, L. R. 1 P. & D. 459.

[5] See cases collected Chit. Stat. (4th ed.), pp. 2, 895, &c.; and

the Court does act under it, "the same is to be made plainly to appear" in the administrator's oath, letters of administration, and administration bond[1] (Form of oath, p. 104).

A person entitled to a grant of administration, like an executor, may renounce[2] (Form, p. 70), and, if he lies by and does nothing, may be called upon by citation to accept or refuse,[3] but the Court has discretion whom to appoint if he refuses, for the sections as to "persons who would have been entitled" apply only to renunciation by an executor.[4] The exercise of this discretion is guided by circumstances.[5]

A husband's signature merely for the purpose of his wife's renunciation does not prevent him from having a grant as a creditor.[6]

The Court has entire discretion as to retraction of an administrator's renunciation, for the sections which throw doubt on that discretion in the case of an executor do not apply.[7]

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more recent cases, In the Goods of Minshull, L. R. 14 P. D. 151; In the Goods of Eccles, L. R. 15 P. D. 1.

[1] Ru. 1862, 31; 1863, 37.

[2] See, among numerous cases, In the Goods of Fell, 2 Sw. & Tr. 126. [3] In the Goods of Barker, 1 Curt. 592. [4] See p. 42.

[5] See In the Goods of Blake, 35 L. J., N. S., P. & M. 91 (mere desire of next-of-kin not followed); In the Goods of Keane, 1 Hagg. 692 (brother, only next-of-kin, renounced; nephew, that brother's son, appointed); In the Goods of Johnson, 2 Sw. & Tr. 595 (brothers, only next-of-kin, renounced; uncle appointed). See In the Goods of Blagrave, 2 Hagg. 83 (grant made to a son of a person entitled to a moiety); *per Cur.* in In the Goods of Williams, L. R. 2 P. & D. 81, 82.

[6] In the Goods of Biggs, L. R. 1 P. & D. 595

[7] See p. 42, as to executor.

The right of renouncing administration is not lost (like that of renouncing probate) by intermeddling with the estate.[1]

Administration may be renounced by attorney, but, apparently, not unless the power expressly authorizes it.[2]

Limited or Special Probate, 51; Limited or Special Administration, 52.

It is not intended to deal with these subjects at length, but they are mentioned for the purpose of cautioning the lay reader, who, when he sees that he is approaching anything which appears to be "special," will do well to seek professional advice.

We do not find any complete definition of limited or special probate; the following remarks, however, will, it is hoped, enable the reader to understand what the expression means.

Probate of a married woman's will is not now limited or special.[3]

The following are instances of limited or special probate:—

Probate of a copy or draft where the will is lost[4] (Form of oath, p. 100).

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[1] In the Goods of Davis, 29 L. J., N. S., P. M. & A. 72; and see In the Goods of Fell, 2 Sw. & Tr. 126, 127. As to renunciation of probate, see p. 42.

[2] In the Goods of Rosser, 3 Sw. & Tr. 490. As to probate in such a case, see p. 43.

[3] Amended Ru. 1887, repealing Ru. 1862, 15, and 1863, 18, and substituting new Ru. 15 and 18. These references apply equally to administration.

[4] In the Goods of Butts, 2 Spinks, Eccl. & Adm. 58; In the

Probate of statements in an affidavit when neither copy nor draft can be found.[1]

Probate of codicil when will lost or revoked; of second codicil when will and first codicil lost[2] (or, it may be presumed, revoked).

Probate limited to property not covered by a previous grant (Form of oath, p. 65), to some specified property, or to property "save and except" some specified property (Form of oath, p. 101).

"Cessate" probate, on an executor returning from abroad or coming of age, the property having previously been managed under letters of administration (Form of oath, p. 102).

Our opening remarks as to limited or special probate, including that respecting a married woman,[3] apply, *mutatis mutandis*, to limited or special administration.

Administration under 20 & 21 Vict. c. 77, s. 73, has been mentioned earlier.[4]

All persons applying for limited or special administration should study the Rules of Court especially

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Goods of Thrippleton, 35 L. T., N. S., 909; In the Goods of Barber, L. R. 1 P. & D. 267.

[1] In the Goods of Garduer, 1 Sw. & Tr. 109.

[2] Gardiner *v.* Courthope, L. R. 12 P. D. 14 (will lost); In the Goods of Turner, L. R. 1 P. & D. 403 (will revoked); Black *v.* Jobling, L. R. 1 P. & D. 685 (will and codicil lost). Some of these seem to be cases of administration with will, &c., annexed but the principle is the same. They are all *reported* as cases of probate.

See p. 51.

See p. 48.

relating to this subject.[1] These relate to the form of oath, the sureties and penalty of the bond, and various other details.

The following are instances of limited or special administration :—

Administration *de bonis non* (of property not yet administered), granted when the estate has already been partly administered, *e.g.*, when a sole administrator has died without completing the administration (Form of oath, p. 68).

Administration *durante absentia ;* when an executor or person entitled to administration resides out of England, such a grant may be made to the attorney of such executor or person, or to some other person[2] (Form of oath, p. 103).

Administration *durante minoritate* or *durante minore ætate ;* when the executor or person entitled to administration has not attained 21. The grant is generally made to the guardian[3] (Form of oath, p. 105).

Administration *pendente lite* (limited during a suit or action) ; granted when litigation as to probate or administration or the like is going on.[4] An administrator *pendente lite* is like an ordinary administrator

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[1] Ru. 1862, 29, 30, 37, 39, 40 ; 1863, 35, 36, 43, 46, 47.

[2] As to attorney, Ru. 1862, 32 ; 1863, 38 ; as to other person, 38 Geo. III. c. 87, s. 1 ; 20 & 21 Vict. c. 77, s. 74 ; 21 & 22 Vict. c. 95, s. 18.

[3] As to Court's power to appoint guardian, Ru. 1862, 33–36 ; 1863, 39–42. See also 38 Geo. III. c. 87, ss. 6, 7. As to preference of testamentary guardian, see pp. 44, 45.

[4] 20 & 21 Vict. c. 77, s. 70, as extended by 21 & 22 Vict. c. 95, s. 22.

in most things, but he cannot distribute the residue, and he is subject to the control of the Court.[1] Administration *pendente lite* may be granted *de bonis non* when an executor dies before completing the distribution and there is an action as to the validity of his (the executor's) will[2] (Form of oath, p. 105).

Administration "save and except" particular property, under a variety of circumstances.[3]

Administration (apparently) with lost will, &c., annexed.[4]

"Cessate" administration; similar, *mutatis mutandis*, to cessate probate.[5] The bond *may* be limited to double the value of the *remaining* property.[6]

Rights before Probate or Administration.

An executor may, before probate, do anything that he would have a right to do after probate, except bring an action.[7] In the words of Lord Macclesfield, "saving only as to the liberty of suing, the executor is compleatly so, before probate."[8] But a person entitled to a grant of administration cannot act until

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[1] 20 & 21 Vict. c. 77, s. 70.

[2] In the Goods of Fawcett, L. R. 14 P. D. 152.

[3] *E.g.*, when that property is exempt from probate or administration; for instances of such property, see p. 16.

[4] See p. 52, and *note ibid.*

[5] As to cessate probate, see p. 52.

[6] See Abbott *v.* Abbott, 2 Phillim. 578.

[7] *Per Cur.* in Wankford *v.* Wankford, 1 Salk. [299], [301].

[8] Humphreys *v.* Ingledon, 1 P. W. [752]. It must be remembered, however, that if he intermeddles he loses his natural right to renounce probate; see p. 42.

the grant is made ;[1] the few exceptions to this rule are of a highly technical character, and cannot be treated here. It is prudent for an executor to do only what is really necessary before probate, lest he lose his right to renounce ;[2] but such a precaution is clearly of far greater moment to a person entitled to a grant of administration. It must be remembered, further, that either one or the other may be subject to penalties if he once intermeddles and does nothing afterwards.[3]

Revocation of Grant, 55 ; Oaths and Affirmations, before whom, 56 ; Absence for Seven Years, 57 ; Foreign Domicile, *ibid.* **; Fees and Costs, 59.**

The rights and duties after probate or administration are beyond the scope of this work, which, as regards the general treatment of our subject, ends with the previous chapter. In the present chapter, however, we touch upon one or two points of detail which may be practically useful.

Revocation of Grant.—A grant of probate or administration may be revoked if improperly made,[4] or if the administrator absconds ;[5] but it remains in force until revoked.[6] The right to revoke, like the

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[1] *Per Cur.* in Wankford *v.* Wankford, *ubi sup.*

[2] By "intermeddling;" see p. 42. [3] See p. 31.

[4] In the Goods of Napier, 1 Phillim. 83. This was the case of a young officer who was left for dead at Corunna, but who afterwards lived to become the famous General Sir Charles James Napier, G.C.B.

[5] In the Goods of Covell, L. R. 15 P. D. 8.

[6] In the Goods of Morris, 2 Sw. & Tr. 360; *per Cur.* in In the Goods of Ivory. Hawkin *v.* Turner, L. R. 10 Ch. D. 372, 374, 375.

right to make, a grant appears to belong exclusively to the Probate Division.[1]

OATHS AND AFFIRMATIONS, BEFORE WHOM.[2]—Persons before whom the oaths and affirmations mentioned in this work may be made are generally:—

In England.—Officers, &c., of any Court authorized by a judge of the Court, or acting under the Rules, &c., of the Court;[3] Commissioners for Oaths, including those authorized to administer oaths in the Supreme Court before the commencement of the Act here referred to.[4]

Out of England generally.—Commissioners for Oaths in the Supreme Court of Judicature in England; Commissioners for Oaths; persons having authority to administer oaths in the particular place.[5]

In Foreign Parts out of her Majesty's Dominions.—British ambassadors, envoys, ministers, chargés-d'affaires, secretaries of embassy or legation, consuls-general, consuls, vice-consuls, acting consuls, pro-consuls, or consular agents, in the foreign countries or places in which they are exercising their functions.[6] Any person having authority to administer an oath in

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[1] *Per Cur.* in Priestman *v.* Thomas, L. R. 9 P. D. 70, 76; apparently approved in S. C. on app., *ibid.* 210; and see 20 & 21 Vict. c. 77, s. 4. As to right to make a grant, see pp. 17, 33.

[2] For particular cases of probate and administration under 44 Vict. c. 12, ss. 33–36, and administration under 36 & 37 Vict. c. 52, and 38 & 39 Vict. c. 27, see pp. 30, 38.

[3] 52 Vict. c. 10, s. 2; see also 36 & 37 Vict. c. 66, ss. 77, 82, 84.

[4] 52 Vict. c. 10, ss. 1 (2), 13; commencement of Act, Jan. 1, 1890.

[5] S. A. ss. 1 (2), 3 (1), 13.

[6] S. A. s. 6 (1).

the particular place.[1] An oath made before a foreign authority need not be in English form.[2]

A Commissioner for Oaths cannot act as such in any proceeding in which he is solicitor (or clerk to the solicitor) to any of the parties, or in which he is interested.[3]

Observe that there are rules expressly dealing with the subject of affidavits; these rules should of course be attended to.[4]

ABSENCE FOR SEVEN YEARS.—A person is, generally, assumed to be dead if he has been absent for seven years and has not been heard of; but it is not always easy to judge whether the rule applies, and it is best, in case of such absence, to seek professional advice.

FOREIGN DOMICILE, &c.—In case of foreign domicile[5] at time of death, probate or administration with the will annexed is granted if there is a valid will under the law of the country of domicile.[6] Similarly, ordinary administration is granted to the person who would have a similar right by the law of that country.[7] The

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[1] S. A. s. 3 (1).

[2] In the Goods of Lambert, L. R. 1 P. & D. 138; S.C. 35 L. J., N. S., P. & M. 64.

[3] S. A. s. 1 (3).

[4] See Ru. 1862, 51–58; 1863, 64–71; but, for original Ru. 1862, 52, 53, and 1863, 65, 66, new rules (with same numbers) are substituted by Order of March 21, 1882.

[5] A person's "domicile" may be defined, practically, as his permanent residence.

[6] As to probate, *per Cur.*, In the Goods of Deshais, 4 Sw. & Tr. 13; as to administration, In the Goods of Dormoy, 3 Hagg. 767.

[7] In the Goods of Bianchi, 1 Sw. & Tr. 511.

best proof of foreign law is a certificate from the foreign Minister in England.[1]

The law as to persons domiciled in a colony is, in the main, the same, except, of course, as to the way of proving the local law.[2]

Grants made in Scotland or Ireland to persons there domiciled may be "sealed" in England; they are then operative in England.[3] Similarly, *mutatis mutandis*, English grants may be made available in Ireland.[4]

Grants made in England or Ireland may be made available in Scotland by a note or memorandum written on them, and signed by the "proper officer of the Probate Division," stating that the deceased died domiciled in England (or Ireland, as the case may be).[5] The oath as to value, in such cases, includes the whole personal estate in the United Kingdom[6] (Form, p. 66).

Apart from general questions of domicile, there are special provisions as to domicile of *British subjects;* these may be thus summarized:[7]—

A will of personal property may be made *out of the*

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[1] In the Goods of Dormoy, 3 Hagg. 767.

[2] See In the Goods of Probart, 36 L. J., N. S., P. & M. 71. In this case there was an affidavit by an attorney of the Supreme Court of the colony.

[3] As to Scotland, 21 & 22 Vict. c. 56, s. 12; as to Ireland, 20 & 21 Vict. c. 79, s. 95; 21 & 22 Vict. c. 95, s. 29; and see Ru. 1862, 73; 22 & 23 Vict. c. 31, s. 25.

[4] 20 & 21 Vict. c. 79, s. 94.

[5] 21 & 22 Vict. c. 56, s. 14.

[6] S. A. s. 15; and see Ru. 1862, 74; 1863, 86, 87.

[7] The passage which follows is taken principally rom the author's work, "Will-making made Safe and Easy" (John Hogg, 13 Paternoster Row), pp. 32, 33.

United Kingdom by a British subject, whatever be his domicile at the time of making it or at his death, according to the law of the place where it is made, *or* the law of the place where he is domiciled when it is made, *or* "the laws then in force in that part of her Majesty's dominions where he had his domicile of origin;"[1] and it may be made *in the United Kingdom* according to the law of that part of the United Kingdom in which it is made;[2] in all these cases it may be proved in England or Ireland, or confirmed in Scotland.[3] These sections do not apply to a person originally a British subject who has ceased to be one when the will is made.[4] A change of domicile cannot now invalidate a will already made.[5]

FEES AND COSTS.—Generally, there are two sets of payments to be made—viz., if a solicitor is employed, the ordinary Registry fees, *and* the solicitor's costs; if a solicitor is not employed, the ordinary Registry fees, *and* the additional Registry fees on "personal applications." Scales of all fees and costs may be purchased at the Queen's printers'[6] for a small sum, but for the convenience of the general public the scale of fees on *personal applications* is given later.[7]

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[1] 24 & 25 Vict. c. 114, s. 1.

[2] S. A. s. 2.

[3] S. A. ss. 1, 2. "Confirmation" in Scotland corresponds with probate in England or Ireland.

[4] Bloxam *v.* Favre, L. R. 9 P. D. 130.

[5] S. A. s. 3.

[6] Eyre & Spottiswoode, East Harding Street, E.C.

[7] See Appendix C., p. 90.

FORMS.

Preliminary Remarks, 60; Forms, Principal Registry, 63; Adaptation to District Registries, 74; Remarks on Forms "A" and "B" (all Registries) 75.

PRELIMINARY REMARKS.—Only a few forms can be given here;[1] those who wish for a more comprehensive set should obtain some larger work.[2] Most of the forms in frequent use can be purchased (printed with blanks for filling up) at law stationers' offices.

In preparing forms for actual use the following points should be borne in mind:[3]—

The reader must adapt them to the number and sex of the applicants.

If the will shows an executor to be testator's father, grandfather, son, grandson, brother, uncle, great uncle, nephew, or great nephew, he must be so described.[4]

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[1] But some "Additional Forms," of a less common character, are given in Appendix D, p. 100

[2] The author has ascertained from an official source that Tristram and Coote's "Probate Practice" is considered to contain the most comprehensive set of forms at present in print.

[3] See, as to most of these details, the "Directions" printed in Coote's Prob. Prac. (also in Tr. & Co. Prob. Prac.), Appendix III. The origin of these directions is not stated, but it is probable that they were compiled many years ago by the late Mr. Coote, as the result of official experience in the principal registry.

[4] The same rule applies, *mutatis mutandis*, to an executrix.

A single executor or executrix is called "the sole executor" (or "executrix"); several of the former (or of both sexes) "the executors;" several of the latter "the executrixes."

An administrator or administratrix, if husband, wife, or relation, is described thus:—

Husband, as the lawful husband.

Wife, as the lawful widow and relict.

Father, as the natural and lawful father and next-of-kin.

Mother, as the natural and lawful mother and only next-of-kin.

Child, as the natural and lawful and only child and only next-of-kin, *or* one of the natural and lawful children and next-of-kin.

Brother, *or* sister, as the natural and lawful brother, *or* sister; *if no parents living, add* and one of the next-of-kin, *or* the only next-of-kin.

Nephew, *or* niece, *if no brother or sister living*, the lawful nephew, *or* niece, and one of the, *&c., as last above.*

Same, *if a brother or sister living*,[1] one of the persons entitled in distribution to the personal estate and effects of the deceased.

Any other relative, as lawful grandfather (*or as the case may be*) and one of the, *&c.* (*as in the case of brother or sister*).

The following modes of description are usual and convenient[2] in all documents:—

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[1] In such cases the oath should shew *when* the parent of the nephew, &c., died.

[2] These are taken almost *verbatim* from the author's work

In the Country.—Thomas John Smith, of Woodlands, in the parish of Beaconsfield, in the county of Buckingham, a Captain in her Majesty's Army.

In the City of London.—Timothy Adolphus Jones, of 101 Ludgate Hill, in the parish of St. Martin, Ludgate, in the City of London, Baker.

Elsewhere in London.—Henry William Brown, of 1001 Harley Street, in the parish of St. Marylebone, in the county of Middlesex, Doctor of Medicine.

It is a good general rule to describe a *person* (after mentioning his residence) by his title, profession, trade, or business. A person of position and means who follows no profession but has no title is usually described as "Esquire;" a clergyman, as "Clerk in Holy Orders;" a solicitor, as "Gentleman." An unmarried woman is usually described as "spinster" or "widow," as the case may be; a married woman, by the words "wife of," followed by the name and description of her husband.

It is best to describe a *place* by parish, city, or town (if in a city or town), and county, and to add such particulars as you can obtain as to situation, boundaries, and present and past ownership. If you have to mention a city or town which is itself a county,[1] call it "the county of the city (*or* town) of . . . ." The author once had to argue a case in which much trouble and expense were caused by neglect of this precaution.

"Will-making made Safe and Easy" (John Hogg, 13 Paternoster Row), p. 48.

[1] There are several such cities and towns; see list at p. 24, *note*.

FORMS, PRINCIPAL REGISTRY.[1]

Title of oath or other instrument.[2]

In the High Court of Justice.
Probate, Divorce, and Admiralty Division.
(Probate.) The Principal Registry.

In the Goods of A. B., deceased.

Commencement of oath or solemn affirmation.

I, C. D., of , make oath and say (*or* do solemnly and sincerely affirm) that

Jurat, or form in lieu of jurat.[3]

Sworn[4] (*or* Affirmed[4]) at (*name of place*) this (*date*) before me (*name of person before whom the oath or affirmation is made*),
a Commissioner to administer Oaths in the Supreme Court of Judicature (*or as the case may be*).

Executor's Oath, Ordinary.[5]

(*Title and commencement as above; then*) I believe the paper writing hereto annexed and marked by me to contain the true and original last will and testament of the said A. B., late of , deceased; that I

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[1] For adaptation of forms to district registries, see p. 74.

[2] Except bonds, which have no title.

[3] A "jurat" is the conclusion of an oath; the "form in lieu," &c., is to be used when there is a solemn affirmation instead of an oath; as to circumstances under which this may be, see p. 25.

[4] If several persons swear or affirm, add *by the said C. D. and E. F.*, or the like, as the case may require.

[5] This may be adapted to the case of executor by the tenor, one of several executors, &c.

am the sole executor therein named, and that I will well and faithfully administer the personal estate of the said testator by paying his just debts and the legacies contained in his will so far as the same shall thereto extend and the law bind me, and that I will exhibit a true and perfect inventory of all and singular the said estate and effects, and render a just and true account thereof, whenever required by law so to do; that the testator died at , on the day of , 18 , and that the whole of the personal estate of the said testator amounts in value to the sum of £ and no more, to the best of my knowledge, information, and belief.

(*Jurat as at p.* 63.)

Executor's Oath, Double Probate.[1]

(*Title and commencement as at p.* 63, *then as in* "*Executor's Oath, Ordinary,*" *p.* 63, *down to* of the said A. B.; *then*) deceased, and that I am one of the executors named in the said will; that in the month of , 18 , probate of the said will was granted by this Division, at the principal registry thereof,[2] to E. F., one of the executors named in the said will, power being reserved of making the like grant to me, the said C. D., the other executor therein named; that I am the other executor named in the said will, and that (I will well and faithfully, *&c., as in* "*Executor's Oath, Ordi-*

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[1] For meaning of "double probate," see p. 31.

[2] The registry to which application is now made must be that in which the original grant was made; see p. 18.

nary," p. 63, *omitting* that the testator . . . . 18 ; *jurat as at p.* 63).

Executor's Oath : Property "not covered."

(*Title and commencement as at p.* 63 ; *then*) the said A. B., late of , deceased, died on the day of , 18 , having made and duly executed his last will and testament bearing date the day of , 18 , and therein named his son, me, this deponent, sole executor :

And I further make oath, that the said deceased was at the time of his death possessed of personal estate and effects within the province of Canterbury, and that in the month of , 18 , I duly proved the said will in the Prerogative Court of Canterbury,[1] as by the records of the said Court now remaining in the principal registry of this Division appears :

And I further make oath, that the said deceased was, at the time of his death, possessed of personal estate in England not within the jurisdiction of the said Prerogative Court of Canterbury :

And I further make oath and say, that probate of the said will, limited to all and singular the personal estate and effects of the said deceased in England not covered by the aforesaid probate, is now required to be granted to me :

And I further make oath and say, that I believe the paper writing hereto annexed and marked by me to contain the true and original last will and testament

[1] The original application is supposed to have been made, and probate granted, before the transfer of jurisdiction.

of the said deceased, that I am the sole executor therein named, and that (I will well and faithfully, *&c., as in* "*Executor's Oath, Ordinary,*" *p.* 63; *omitting* that the testator . . . . 18 ; *and adding* limited as aforesaid *after* testator *and after* inventory of the said estate; *jurat as at p.* 63).

Executor's Oath: Probate under 21 *&* 22 *Vict. c.* 56[1]; *Property in England and Scotland.*

(*Title and commencement as at p.* 63; *then same as* "*Executor's Oath, Ordinary,*" *to* personal estate of the said testator[2]; *then*) in England amounts in value to the sum of £ and no more, to the best of my knowledge, information, and belief. And I further make oath and say, that the said testator was domiciled in England at the time of his death, and that he was not, at the time of his death, possessed of or entitled to any personal estate in Ireland, and that the whole of the personal estate of the said testator in Scotland amounts in value to the sum of £ and no more, to the best of my knowledge, information, and belief, and that the whole of the personal estate of the said testator in the United Kingdom amounts in value to the sum of £ and no more, to the best of my knowledge, information, and belief.

(*Jurat as at p.* 63.)

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[1] For description of this enactment, see p. 58. This Form may easily be adapted to meet the case of property in England, Scotland, and Ireland; but as to such a case see Ru. 1862, 74; 1863, 86.

[2] *I.e.*, the *second* time that those words occur.

Administrator's Oath: Wife.[1]

(*Title and commencement as at p.* 63; *then*) the said A. B., late of , deceased, died[2] intestate, and that I am the lawful widow and relict of the said deceased; that I will faithfully administer the personal estate of the said deceased, by paying his just debts, and distributing the residue of his said estate according to law; that I will exhibit a true and perfect inventory of the said estate, and render a just and true account thereof, whenever required by law so to do; that the said deceased died at on the day of , 18 ; and that the whole of the personal estate of the said deceased amounts in value to the sum of £ and no more, to the best of my knowledge, information, and belief.

(*Jurat as at p.* 63.)

Administrator's Oath: Next-of-kin.

(*Title and commencement as at p.* 63; *then*) A. B., late of , deceased, died (a bachelor *or* a widower, *if so*) without[3] and intestate, and that I am

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[1] This can be adapted to a husband by substituting *lawful husband* for "lawful widow and relict," and by writing *her* for "his" where necessary.

[2] There are no "clearing off" words here (for the meaning of this expression see p. 34), as no one can have a prior right to a wife: see p. 43. This applies also to a husband: see p. 45.

[3] Here follows what is called the "clearing off," *i.e.*, shewing that no person having a prior claim is living, and willing to apply for a grant: see p. 34. For instance, if the administrator is a

the[1] of the said deceased; (that I will faithfully, *&c., as in "Administrator's Oath: Wife," p.* 67; *jurat as at p.* 63).

Administrator's Oath: Will annexed.[2]

(*Title and commencement as at p.* 63; *then as in "Executor's Oath, Ordinary," p.* 63, *down to* late of , deceased; *then*) that the said deceased did not in his said will name any executor; that I am the lawful widow and relict of the said deceased and the residuary legatee named in his said will; that I will well and faithfully administer the personal estate of the said deceased, by paying his just debts and the legacies contained in his will, and distributing the residue of his estate according to law; that (I will exhibit, *&c., as in "Executor's Oath, Ordinary," p.* 63; *jurat as at p.* 63).

Administrator's Oath: Administration de bonis non.

(*Title and commencement as at p.* 63; *then as in "Administrator's Oath: Wife," p.* 67, *down to* died intestate; *then*) that in the month of , 18 , letters of administration of his personal estate and effects were, by authority of this Division (*or as the*

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cousin german, the words will be *without child* (unless deceased was a bachelor or spinster), *parent, brother or sister, uncle or aunt, nephew or niece.*

[1] How to fill this in, see p. 61.

[2] See pp. 13, 32, as to circumstances under which there may be administration with the will annexed; those circumstances should be stated, whatever they may be (*e.g.*, renunciation of executors, &c.)

case may be), granted to E. F., his lawful widow and relict, who for some time intermeddled therein, and died on the day of , 18 , leaving part thereof unadministered, and that I am the natural and lawful and only child and only next-of-kin of the said A. B, deceased; that (I will faithfully, *&c.*, *as in* "*Administrator's Oath: Wife*," *p.* 67, *inserting* left unadministered as aforesaid *after* estate of the said deceased *and* inventory of the said estate; *jurat as at p.* 63).

Consent to Grant.[1]

(*Title as at p.* 63; *then*) Whereas A. B. (*then as in* "*Administrator's Oath: Next-of-kin*," *p.* 67, *from* late of *to* intestate; *then*) leaving C. D. and me, the undersigned E. F., his natural and lawful and only next-of-kin. Now I, the said E. F., do hereby declare that I do expressly consent that letters of administration of the personal estate and effects of the said deceased may be granted to the said C. D., one of the natural and lawful and next-of-kin of the said deceased as aforesaid. [And I do, *&c.*[2]]

In witness whereof I have hereunto set my hand and seal this day of , 18 .

(*Signature, &c., as in* "*Renunciation*," *next page.*)

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[1] When several persons have equal rights, and it is desired that only one should administer.

[2] If necessary, insert appointment of solicitor to file the document thus:—*I do hereby appoint G. H., of , my solicitor to file or cause to be filed this for me in the Probate, Divorce, and Admiralty Division of Her Majesty's High Court of Justice.*

Renunciation of Probate.[1]

(*Title as at p.* 63; *then*) Whereas A. B., late of , deceased, died on the day of , 18 , at , having made and duly executed his last will and testament, bearing date the day of , 18 , and thereof appointed me, the undersigned C. D., sole executor:

Now I, the said C. D., do hereby declare that I have not intermeddled[2] in the personal estate and effects of the said deceased, and will not hereafter intermeddle therein with intent to defraud creditors, and I do hereby expressly renounce all my right and title to the probate and execution of the said will.

In witness, *&c.* (*as in "Consent," p.* 69).

Signed by the said C. D., this day of , 18 , in the presence of } (*Signed*) C. D.

Renunciation of Administration.

(*Title as at p.* 63; *then*) Whereas A. B., late of , in the county of , deceased, died on the day of , 18 , at , intestate, a widower; and whereas I, C. D., am his natural and lawful and only child:

Now I, the said C. D., do hereby expressly renounce

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[1] To this and the subsequent P. R. forms can be added, if required, an appointment of a solicitor to file the document, like that in "Consent," p. 69.

[2] It will be remembered that an executor cannot renounce if he has intermeddled; see p. 42. It is otherwise as to a person entitled to administration; see p. 51.

all my right and title to the letters of administration of the personal estate and effects of the said deceased.

In witness, *&c.* (*as above*).

(*Signature, &c., as above.*)

Renunciation of Administration: Will annexed.

(*Title as at p. 63; then*) Whereas A. B., late of , deceased, died on the day of , 18 , at , having made and duly executed his last will and testament, bearing date the day of , 18 , and did not thereof appoint any executor, but therein appointed me, the undersigned C. D., residuary legatee:

Now I, the said C. D., do hereby expressly renounce all my right and title to the letters of administration, with the said will annexed, of all and singular the personal estate and effects of the said deceased.

In witness, *&c.* (*as above*).

(*Signature, &c., as above.*)

Administration Bond, Ordinary.

Know all men by these presents, that we, A. B., of , C. D., of , and E. F., of , are jointly and severally bound unto the Right Honourable Sir James Hannen, Knight, the President of the Probate, Divorce, and Admiralty Division of Her Majesty's High Court of Justice, in the sum of pounds of good and lawful money of Great Britain, to be paid to the said Right Honourable Sir James Hannen, Knight, or to the President of the said Division for the time being, for which payment well and truly to be

made we bind ourselves and every of us for the whole, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals. Dated the day of in the year of our Lord one thousand eight hundred and .

The condition of this obligation is such, that if the above-named A. B., the (*as the case may be*) of I. J., late of , deceased, who died on the day of , and the intended administrator of all and singular the personal estate and effects of the said deceased, do, when lawfully called on in that behalf, make or cause to be made a true and perfect inventory of all and singular the personal estate and effects of the said deceased, which have or shall come to his hands, possession, or knowledge, or into the hands or possession of any other person for him, and the same so made do exhibit or cause to be exhibited into the principal registry of the Probate Division of Her Majesty's High Court of Justice, whenever required by law so to do, and the same personal estate and effects, and all other the personal estate and effects of the said deceased at the time of his death, which at any time after shall come to the hands or possession of the said , or into the hands or possession of any other person or persons for him, do well and truly administer according to law; (that is to say,) do pay the debts which did owe at his decease, and further do make or cause to be made a just and true account of his said administration whenever required by law so to do; and all the rest and residue of the said personal estate and effects do deliver and

pay unto such person or persons as shall be entitled thereto, under the Act of Parliament intituled "An Act for the better settling of Intestates' Estates;" and if it shall hereafter appear that any last will and testament was made by the said deceased, and the executor or executors, or other persons therein named, do exhibit the same into the Probate Division of the said Court, making request to have it allowed and approved accordingly, if the said , being thereunto required, do render and deliver the said letters of administration (approbation of such testament being first had and made) in the said Division, then this obligation to be void and of none effect, or else to remain in full force and virtue.

Signed, sealed, and delivered by the within-named in the presence of	(*Signatures and seals.*)

Administration Bond: Will annexed.

(*Same as "Administration Bond, Ordinary," p.* 71, *down to* intended administrator; *then*) with the will annexed of all and singular the personal estate and effects of the said deceased do, when lawfully called on in that behalf, make or cause to be made a true and perfect inventory of all and singular the personal estate and effects of the said deceased which have or shall come to his hands, possession, or knowledge, and the same so made do exhibit or cause to be exhibited into the principal registry of the Probate Division of Her Majesty's High Court of Justice, whenever required by law so to do, and the same per-

sonal estate and effects do well and truly administer; (that is to say,) do pay the debts of the said deceased which he did owe at his decease, and then the legacies contained in the said will annexed to the said letters of administration so to him committed, as far as his personal estate and effects will thereto extend and the law charge him, and further do make or cause to be made a just and true account of his said administration when he shall be thereunto lawfully required, and all the rest and residue of the said personal estate and effects shall deliver and pay unto such person or persons as shall be by law entitled thereto, then this obligation to be void and of none effect, or else to remain in full force and virtue.

Signed, sealed, and delivered by the within-named in the presence of } (*Signatures and seals.*)

Administration Bond: Administration de bonis non.

(*Same as "Administration Bond, Ordinary," p.* 71, *inserting* left unadministered by L. M., also since deceased, whilst living the (*as the case may be*) of the said deceased *before* do, when lawfully, *and* left unadministered *before* which have or shall, *before* and all other, *and before* do deliver.)

Adaptation of Forms to District Registries.

The principal registry forms may generally be adapted to the practice of the district registries by attending to the following

Directions :—

In the title, substitute *The District Registry at* for "The Principal Registry."

In the oath on a *first* application, insert, just before the statement of value, the words *that the said testator* (or *deceased*) *had at the time of his death a fixed place of abode at* , *within the district of* .[1]

In the oath on *second or later* application, be careful to state that the first application was made in the *same* district registry.[2]

The following example will show how these directions may be applied in the ordinary case of an executor's oath :—

Executor's Oath, Ordinary (in district registry).

(*Title as at p.* 63, *except that* The District Registry at *must be put instead of* The Principal Registry; *then as in* "*Executor's Oath, Ordinary,*" *p.* 63, *down to* the day of , 18 ; *then*) that the said testator had at the time of his death a fixed place of abode at , within the district of ; (*same as* "*Executor's Oath, Ordinary,*" *from* and that the whole, *&c.; jurat as at p.* 63).

REMARKS ON FORMS "A" AND "B" (ALL REGISTRIES).

Forms "A" and "B," which are forms of affidavits for the Commissioners of Inland Revenue,[3] are very

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[1] As to the necessity for these words, see p. 18.

[2] It has been seen that a "second or subsequent" application must be made in the same registry as the first; see p. 18.

[3] As to the nature of these affidavits, see p. 25, &c.

carefully framed, with blanks for filling up, and marginal directions for adapting them to either kind of registry and to a great variety of circumstances. It is unnecessary to give copies of them here, as the Commissioners of Inland Revenue are commanded by Act of Parliament to provide them.[1] Form "A" is to be used (1) if the estate exceeds the value of £300, or (2) if, notwithstanding its not exceeding that value, there is no intention of proceeding under 44 Vict. c. 12, ss. 33–36;[2] form "B," (1) if the estate does not exceed the value of £100, or (2) if it exceeds that value, and it is intended to proceed under the sections just mentioned.[3]

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[1] See p. 27.

[2] See p. 30.

[3] These values are to be calculated *without* deducting debts or funeral expenses.

APPENDIX A.

Principal Kinds of Personal Property.[1]

THE principal kinds of personal property are:[2]—

Money (whether in hand or at bank).
Furniture.
Clothes.
Personal and other ornaments.
Jewels.
Works of art.
Carriages.
Surgical and other instruments.
Locomotives.
Minerals, when taken out of the mines.
Timber, when severed from the soil.
Building materials, when not attached to the soil as buildings.
Horses, cattle, and domestic animals generally.
British ships.

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[1] Personal property has been defined earlier (see def. p. xi.), but it may help the reader to have a list of the principal kinds before him. This list is taken almost *verbatim* from the author's earlier work, "Will-making made Safe and Easy" (John Hogg, 13, Paternoster Row, 1888), p. 97, &c.

[2] The kind last mentioned in this list is, strictly speaking, real property, but it vests in executors and administrators, like personal property, under 7 Will. IV. & 1 Vict. c. 26, s. 6.

Stocks and shares generally, including "New" shares in the New River Company.[1]

Leases for fixed periods (*e.g.*, for twenty-one years or 1000 years),[2] and under-leases.

Rents for fixed periods.

Annuities for fixed periods.

Annuities given merely by deed, and not charged on any property.

Annuities charged on personal property.

Next presentations, when separated from the advowsons.[3]

Deeds and documents, fixtures (unless attached to the soil), heirlooms, vegetables, wild animals, debts (whether secured by mortgage or not), policies of insurance, and bonds.

Copyright of a book.[4]

Goodwill of a business.

Land, &c., held for the life or lives of another or others, unless held to a man "and his heirs."[5]

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[1] *Original* shares in the New River Company are real property.

[2] As distinguished from lands, &c., held for the life or lives of another or others (as to which, see below).

[3] But an advowson, or perpetual right of presentation, is real property.

[4] 5 & 6 Vict. c. 45, s. 25.

[5] But see *note* as to this, p. 77.

APPENDIX B.

Divisions of Counties

(From 2 & 3 Will. IV. c. 64, ss. 7, 10, 14, 18, 20, 22).

Essex, Northern Division.[1]—Hundreds of

Clavering,	Tendring,
Dunmow,	Thurstable,
Freshwell,	Uttlesford,
Hinckford,	Winstree, and
Lexden,	Witham.

Kent, Eastern Division.[2]—Lathes of

St. Augustine and Shepway, including the Liberty of Romney Marsh, and the Upper Division of the Lathe of Scray.

Northamptonshire, Northern Division.

Liberty of Peterborough, and the several Hundreds of

Willybrook,	Higham Ferrers,
Polebrook,	Rothwell,
Huxloe,	Hamfordshoe,
Navisford,	and
Corby,	Orlingbury.

The southern division is not included in sched. A.; it therefore comes within the exclusive jurisdiction of the principal registry see p. 18.

The western division is not included in sched. A.; it therefore comes within the exclusive jurisdiction of the principal registry; *ibid.*

Northamptonshire, Southern Division.

Kings Sutton,
Chipping Warden,
Greens Norton,
Cleley,
Towcester,
Fawsley,
Wymersley,
Spelhoe,
Nobottle Grove, and
Guilsborough.

Somersetshire, Eastern Division.—Hundreds or Liberties of

Bath Forum,
Bempstone,
Brent and Wrington,
Bruton,
Catsash,
Chew and Chewton,
Norton Ferris,
Frome,
Glaston Twelve Hides,
Hampton and Claverton,
Horethorne,
Keynsham,
Kilmersdon,
Mells and Leigh,
Portbury,
Wellow,
Wells Forum,
Whitstone,
Winterstoke, and
Witham Friary;

and also the Hundred of Hartcliffe with Bedminster, except such parts of that Hundred as are included in the limits of the City of Bristol.

Western Division.—Hundreds of

Abdick and Bulstone,
Andersfield,
Cannington,
Carhampton,
Crewkerne,
North Curry,
Houndsborough, Berwick, and Coker,
Huntspill and Puriton,
Kingsbury, East,
Kingsbury, West,
Martock,
Milverton,
North Petherton,
South Petherton,
Pitney,
Somerton,
Stone,
Taunton and Taunton Dean,
Tintinhull,
Whitley, and
Williton and Freemanors.

Suffolk, Eastern Division.

Liberty of Bury St. Edmunds, and the respective Hundreds of Hartesmere and Stow.

Western Division.

All such parts of the County of Suffolk as are not comprised in the Liberty of Bury St. Edmunds, or in either of the Hundreds of Hartesmere and Stow.

Sussex, Eastern Division.

Rapes of Lewes, Hastings, and Pevensey.

Western Division.

Rapes of Arundel, Bramber, and Chichester.

Alphabetical List of Places for Applications under 44 Vict. c. 12, ss. 33-36.[1]

(N.B.—Places in CAPITALS are also "places of district probate registries;"[2] see p. 19.)

Abergavenny.
Aberystwith.
Abingdon.
Alnwick.
Andover.
Arundel.
Ashford.
Ashton-under-Lyne.
Aylesbury.
Banbury.
BANGOR.
Barnsley.
Barnstaple.
Bath.

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[1] Applications for probate or administration where the estate does not exceed the value of £300; see p. 30. The county is indicated in italics where it seems desirable for the purpose of distinction; *e.g.*, "Bradford (*Yorks*)."

[2] All "places of district registries" are included in this list, so that the names printed in capitals constitute a complete alphabetical list of such places.

Bedale.
Bedford.
Belper.
Berkhamsted.
Bideford.
Bilston.
Birkenhead.
BIRMINGHAM.
Bishop Auckland.
Bishop's Castle.
Bishop's Stortford.
Blackburn.
BLANDFORD.
BODMIN.
Bolton.
Boston.
Bradford (*Yorks*).
Bradford-on-Avon.
Braintree.
Brecon.
Bridgend.
Bridgnorth.
Bridgwater.
Brierley Hill.
Brighouse.
Brighton.
BRISTOL.
Bromsgrove.
Buckingham.
Burnley.
Burton-on-Trent.
Bury (*Lanc.*).
BURY ST. EDMUNDS.
Cambridge.
Campden.
CANTERBURY.
Cardiff.
Cardigan.
CARLISLE.
CARMARTHEN.
Chelmsford.
Cheltenham.
Chepstow.
Chertsey.
CHESTER.
Chesterfield.
CHICHESTER.
Chippenham.
Chipping Norton.
Cirencester.
Colchester.
Conway.
Corwen.
Coventry.
Crewkerne.
Darlington.
Daventry.
Denbigh.
DERBY.
Dereham.
Devizes.
Dewsbury.
Dolgelly.
Doncaster.
Dorchester.
Dover.
Driffield.
Dudley.
DURHAM.
Ely.
Evesham.
EXETER.

Eye.
Faringdon.
Gainsborough.
GLOUCESTER.
Grantham.
Gravesend.
Greenwich.
Grimsby.
Guildford.
Halifax.
Halstead.
Hanley.
Hastings.
Haverfordwest.
HEREFORD.
Hertford.
Hexham.
Hitchin.
Honiton.
Huddersfield.
Hull.
Huntingdon.
Ilfracombe.
IPSWICH.
Ironbridge.
Keighley.
Kendal.
Kidderminster.
Kingston-on-Thames.
Knaresborough.
LANCASTER.
Leamington.
Leeds.
LEICESTER.
Leominster.
LEWES.
LICHFIELD.
LINCOLN.
LIVERPOOL.
LLANDAFF.
Llandilo.
Llangefni.
Loughborough.
Louth.
Ludlow.
Lynn.
Macclesfield.
Maidenhead.
Maidstone.
Malton.
Malvern.
MANCHESTER.
Mansfield.
Market Harborough.
Marlborough.
Melton Mowbray.
Merthyr.
Monmouth.
Newark.
NEWCASTLE-ON-TYNE.
Newcastle-under-Lyme.
Newnham.
Newport (*Isle of Wight*).
Newport (*Monm.*).
Newport (*Salop*).
Newton Abbot.
Newtown.
North Tawton.
North Walsham.
NORTHAMPTON.
NORWICH.
NOTTINGHAM.

Nuneaton.
Odiham.
Oldham.
Ormskirk.
Oswestry.
OXFORD.
Pembroke.
Penrith.
PETERBOROUGH.
Petersfield.
Plymouth.
Pontypool.
Poole.
Portsmouth.
Preston (*Lanc.*).
Pwllheli.
Reading.
Redbridge.
Redruth.
Reigate.
Rhyl.
Ripon.
Rochdale.
Romford.
Royston.
Runcorn.
Ruthin.
Saffron Walden.
ST. ASAPH.
St. Austell.
SALISBURY.
Scarborough.
Selby.
Shaftesbury.
Sheffield.
Shepton Mallet.
Sherborne.
SHREWSBURY.
Sleaford.
Smethwick.
South Molton.
Southampton.
Stafford.
Stamford.
Stockport.
Stockton.
Stoke-on-Trent.
Stony Stratford.
Stourbridge.
Stowmarket.
Stratford-on-Avon.
Stroud.
Sudbury (*Suff.*).
Sunderland.
Swansea.
Tadcaster.
TAUNTON.
Thetford.
Tiverton.
Totnes.
Tottenham.
Truro.
Tunbridge.
Tunbridge Wells.
Ulverston.
Uttoxeter.
Wadebridge.
WAKEFIELD.
Walsall.
Ware.
Warminster.
Warrington.

Wednesbury.
Wellingborough.
Wellington (*Salop*).
WELLS.
Welshpool.
West Bromwich.
Weymouth.
Whitchurch.
Whitehaven.
Wigan.
Williton.
WINCHESTER.
Witney.
Wolverhampton.
Woodbridge.
WORCESTER.
Worksop.
Wotton-under-Edge.
Wrexham.
Yarmouth (*Norf.*).
Yeovil.
YORK.

APPENDIX C.

Rules as to Personal Applications[1] (all Registries).

1. PERSONS wishing to obtain grants of probate or letters of administration without the intervention of a proctor, solicitor, or attorney, must apply in person at the department for personal applications (*District Registry:* at the district registry, in person), and not by letter.

2. No such application will be received through an agent of any kind (whether paid or unpaid).

3. The applications of parties who are attended by a person acting or appearing to act as their adviser in the matter will not be entertained.

4. All fees are to be paid in advance in Probate Court stamps.

5. Applications which have (*D.R.*: an application which has) in the first instance been made through a proctor, solicitor, or attorney at the principal registry, or at a district registry, cannot be transferred to this department (*D.R.*: *after* "*attorney*," cannot afterwards be treated as a personal application).

6. Applications for grants of probate or administration in cases which have already been before the Court (on motion or otherwise) will not be entertained at this department (*D.R.*: *after* "*entertained*," as personal appli-

[1] The department for personal applications in the principal registry is at Somerset House, Strand, London, W.C., in the large quadrangle, last door on the left hand (or east) side.

cations), but must be made through a proctor, solicitor, or attorney.

7. Whenever it becomes necessary, in the course of proceeding with an application which has been entertained at this department (*D.R.*: with a personal application), to obtain the directions of the Court, the application will not be proceeded with, but must be placed in the hands of a proctor, solicitor, or attorney.

8. The papers necessary to lead the grant applied for will be prepared in this department (*D.R.*: the district registry). An applicant is, however, at liberty to bring such papers, or any of them, filled up, *but not sworn to*, and the same, if correct, may be received (the usual fee for perusal being charged). All further papers which may be required will be drawn in this department (*D.R.*: the district registry). Testamentary papers once deposited in this department (*D.R.*: the district registry) will not be given out unless under special circumstances, and by permission of one of the registrars (*D.R.*: of a registrar of the principal registry).

9. When it is necessary to administer an oath or take an affirmation the party shall be sworn or affirmed before some proper authority of the principal registry, or of a district registry, unless otherwise permitted by one of the registrars (*D.R.*: the district registrar).

10. Every applicant for a first grant of probate or letters of administration must (*D.R.*: *insert* if required by the district registrar) produce a certificate of the death or burial of the deceased, or give a reason to the satisfaction of one of the registrars (*D.R.*: a satisfactory reason) for the non-production thereof.

11. Every applicant must be prepared with (*D.R.*: the district registrar may require in any case he sees fit) a reference to some person of position or character, to establish his or her identity (*D.R.*: the identity of the applicants).

12. The engrossments of wills and testamentary papers will be made in the registry (*D.R.*; the district registry from which the grant is to issue).

13. Every applicant for a grant of probate or letters of administration shall give under his or her hand a schedule of the property to be affected by the grant in the form hereunto annexed, marked A. (The necessary forms will be provided in the registry (*D.R.*: in the district registry).)

14. Legal advice is not given to applicants, either with respect to the property to be included in the above-mentioned schedule, or upon any other matter connected with the application, and the clerks in this department are (*D.R.*: district registrar is) only to be held responsible for embodying in a proper form the instructions given to them, but they will (*D.R.*: him, but he will), as far as practicable, assist applicants by giving them information and directions as to the course which they must pursue.

15. A receipt or acknowledgment of each application will be handed to the applicant, and the production of such receipt will be required of the person who attends to obtain the grant when completed.

16. No clerk or officer of this department (*D.R.*: the district registry) is to become surety to any administration bond.

17. All administration bonds in cases of personal applications are to be executed in this department, or in a district registry; if executed in this department the bond must be attested by the chief clerk or senior clerk in attendance (*D.R.*: *after "be executed,"* in the district registry making the grant, or in some other registry belonging to the Court of Probate,[1] unless otherwise permitted by the district registrar).

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[1] For this we must now read *Probate Division.*

(A.)—*An Account of the Personal Estate and Effects of , deceased.*

(No Deductions to be made on account of Debts owing by Deceased.)

——	Price of Stocks.	Actual Value.		
		£	s.	d.
Cash in the house and at the bankers .				
Household goods, linen, wearing apparel, books, plate, jewels, carriages, horses, &c., valued at . .				
Stocks or funds of Great Britain transferable at the Bank or elsewhere in England, viz.:—				
Dividends thereon . . .				
Foreign stocks or funds transferable in England, viz.:—				
Dividends thereon . . .				
Leasehold property:—				
Value per annum . .				
Ground-rent on do. per annum				
Length of unexpired term . .				
Rents of real or leasehold property due at the death of the deceased . .				
Rents of leasehold property due since the death of the deceased . .				
Proprietary shares or debentures of public companies, viz.:—				
Dividends or interest thereon .				
Money out on mortgage and other securities				
Interest thereon				
Book debts				

Account of the Personal Estate, &c.—(continued).

—	Price of Stocks.	Actual Value.		
		£	s.	d.
Bonds and bills				
Notes				
Interest thereon				
Real estate *contracted* to be sold .				
Personal estate and effects left by the will under some authority enabling the deceased to dispose of the same as he or she might think fit . .				
Stock in trade, farming stock, and implements of husbandry valued at .				
Other personal property not comprised under the foregoing heads, viz. :—				

Scale of Additional Fees on Personal Applications (all Registries).

Probates or Letters of Administration with Will annexed, or Double or Cessate Probates or Letters of Administration with Will annexed, De bonis non, or Cessate, upon which Stamp Duty payable in respect of Personal Estate of Testator.

Effects sworn under	Preparing Oath of Executors.		Preparing Affidavit for Inland Revenue Office.		Probate under Seal.			Clerks.	
£	s.	d.	s.	d.	£	s.	d.	s.	d.
5	2	6	2	6	0	1	0	—	
20	2	6	2	6	0	1	0	1	0
100	5	0	5	0	0	1	0	2	0
200	5	0	5	0	0	2	0	2	0
300	5	0	5	0	0	5	0	2	0

Probates or Letters of Administration, &c.—(continued).

Effects sworn under	Preparing Oath of Executors.		Preparing Affidavit for Inland Revenue Office.		Probate under Seal.			Clerks.	
£	s.	d.	s.	d.	£	s.	d.	s.	d.
450	5	0	5	0	0	8	0	2	0
600	5	0	5	0	0	11	0	2	0
800	5	0	5	0	0	15	0	2	0
1,000	5	0	5	0	1	2	0	2	0
1,500	5	0	5	0	1	10	0	5	0
2,000	5	0	5	0	2	0	0	5	0
3,000	5	0	5	0	2	10	0	5	0
4,000	5	0	5	0	3	0	0	5	0
5,000	5	0	5	0	3	2	6	7	6
6,000	5	0	5	0	3	5	0	7	6
7,000	5	0	5	0	3	7	6	7	6
8,000	5	0	5	0	3	10	0	7	6
9,000	5	0	5	0	3	12	6	7	6
10,000	5	0	5	0	3	15	0	7	6
12,000	5	0	5	0	3	17	6	7	6
14,000	5	0	5	0	4	0	0	7	6
16,000	5	0	5	0	4	3	9	7	6
18,000	5	0	5	0	4	7	6	7	6
20,000	5	0	5	0	4	11	3	7	6
25,000	5	0	5	0	4	16	3	7	6
30,000	5	0	5	0	5	2	6	7	6
35,000	5	0	5	0	5	8	9	7	6
40,000	5	0	5	0	5	18	3	7	6
45,000	5	0	5	0	6	7	6	7	6
50,000	5	0	5	0	6	17	0	7	6
60,000	5	0	5	0	7	6	3	7	6
70,000	5	0	5	0	8	5	0	7	6
80,000	5	0	5	0	9	3	9	21	0
90,000	5	0	5	0	10	2	6	21	0
100,000	5	0	5	0	11	1	3	21	0
120,000	5	0	5	0	11	10	9	21	0
140,000	5	0	5	0	12	9	6	21	0
160,000	5	0	5	0	13	8	3	21	0
180,000	5	0	5	0	14	7	0	21	0
200,000	5	0	5	0	15	5	9	21	0
250,000	5	0	5	0	16	4	6	21	0
300,000	5	0	5	0	18	11	3	21	0
350,000	5	0	5	0	20	18	3	21	0
400,000	5	0	5	0	21	13	9	21	0
500,000	5	0	5	0	22	9	6	21	0

Every additional £100,000, or any fractional part of £100,000 under which effects are sworn, in addition to above fees, £1 11*s.* 3*d.*

In addition to above, for all second and subsequent grants the same fees for looking up and taking an account of each former representation as on similar grants on which no stamp duty is payable.[1]

	s.	*d.*
Engrossing and collating will, if 3 folios of 90 words or under, including parchment .	4	6
Exceeding 3 folios, per folio	1	6

Engrossing and collating a will or codicil for grant of probate or letters of administration with will annexed when there are pencil marks in the will or codicil or when will or codicil is to be registered facsimile, in addition to any other fee for engrossing and collating same :—

	s.	*d.*
If the pencil marks in the will or codicil, or the part or parts thereof to be registered facsimile, are 2 folios of 90 words in length or under	1	0
If exceeding 2 folios, for every additional folio or part of the folio of 90 words . . .	0	6

Letters of Administration with Will annexed.

In addition to the above fees;

For preparing the bond—if the effects are

	s.	*d.*
Under £20	1	6
£20 and under £100 . .	3	6
£100 and upwards . .	5	0

[1] As to these, see pp. 96, 97.

Letters of Administration granted to Widow of Intestate, or to one or more of his Children, or to one or more of Children of Intestate Widow, on Personal Application at any Registry (if not granted under 36 & 37 Vict. chapter 52, as extended by 38 & 39 Vict. chapter 27[1]), in lieu of all Fees heretofore authorized to be taken.

	Fee. s.	d.
Estate sworn not over £20	5	0
" " 30	6	0
" " 40	7	0
" " 50	8	0
" " 60	9	0
" " 70	10	0
" " 80	11	0
" " 90	12	0
" " 100	13	0

The above include fees for taking instructions for, drawing, and copying instrument of renunciation to be executed by widow of intestate if required, and all other fees payable in respect of such grants.

Other Grants of Letters of Administration, including De bonis non or Cessate, upon which Stamp Duty is payable in respect of the Personal Estate of the Intestate.

Effects sworn not to exceed	Preparing Oath for Administrator and Bond.		Preparing Affidavit for Inland Revenue.		Letters of Administration under Seal.			Clerks.	
£	s.	d.	s.	d.	£	s.	d.	s.	d.
5	4	0	2	6	0	1	0	—	
20	4	0	2	6	0	1	0	1	0
50	7	6	3	0	0	1	0	2	0
100	8	6	5	0	0	1	0	2	0

[1] As to administration under these Acts, see p. 37.

Other Grants of Letters of Administration—(continued).

Effects sworn under	Preparing Oath for Administrator and Bond.		Preparing Affidavit for Inland Revenue.		Letters of Administration under Seal.			Clerks.	
£	s.	d.	s.	d.	£	s.	d.	s.	d.
200	10	0	5	0	0	3	0	2	0
300	10	0	5	0	0	8	0	2	0
450	10	0	5	0	0	11	0	2	0
600	10	0	5	0	0	15	0	2	0
800	10	0	5	0	1	2	0	2	0
1,000	10	0	5	0	1	10	0	5	0
1,500	10	0	5	0	2	5	0	5	0
2,000	10	0	5	0	3	0	0	5	0
3,000	10	0	5	0	3	1	9	7	6
4,000	10	0	5	0	3	3	9	7	6
5,000	10	0	5	0	3	7	6	7	6
6,000	10	0	5	0	3	11	3	7	6
7,000	10	0	5	0	3	15	0	7	6
8,000	10	0	5	0	3	18	9	7	6
9,000	10	0	5	0	4	2	6	7	6
10,000	10	0	5	0	4	6	3	7	6
12,000	10	0	5	0	4	10	0	7	6
14,000	10	0	5	0	4	13	9	7	6
16,000	10	0	5	0	4	19	6	7	6
18,000	10	0	5	0	5	5	0	7	6
20,000	10	0	5	0	5	10	9	7	6
25,000	10	0	5	0	5	18	3	7	6
30,000	10	0	5	0	6	7	6	7	6
35,000	10	0	5	0	6	17	0	7	6
40,000	10	0	5	0	7	10	9	7	6
45,000	10	0	5	0	8	5	0	7	6
50,000	10	0	5	0	8	18	9	7	6
60,000	10	0	5	0	9	13	3	7	6
70,000	10	0	5	0	11	1	3	7	6
80,000	10	0	5	0	12	9	6	21	0
90,000	10	0	5	0	13	17	6	21	0
100,000	10	0	5	0	15	5	9	21	0
120,000	10	0	5	0	15	19	9	21	0
140,000	10	0	5	0	17	8	0	21	0
160,000	10	0	5	0	18	16	3	21	0
180,000	10	0	5	0	20	4	0	21	0

Other Grants of Letters of Administration—(continued).

Effects sworn under	Preparing Oath for Administrator and Bond.			Preparing Affidavit for Inland Revenue.		Letters of Administration under Seal.			Clerks.	
£	s.	d.		s.	d.	£	s.	d.	s.	d.
200,000	10	0		5	0	21	12	6	21	0
250,000	10	0		5	0	23	0	3	21	0
300,000	10	0		5	0	24	3	9	21	0
350,000	10	0		5	0	25	7	3	21	0
400,000	10	0		5	0	26	10	6	21	0
500,000	10	0		5	0	27	14	0	21	0
600,000	10	0		5	0	30	10	0	21	0
700,000	10	0		5	0	32	7	9	21	0
800,000	10	0		5	0	34	13	9	21	0
900,000	10	0		5	0	37	1	6	21	0
1,000,000	10	0		5	0	39	8	6	21	0

For every additional £100,000, or any fractional part of £100,000, under which the effects are sworn, in addition to the above fees, £2 7*s*.

In addition to the above for all second and subsequent grants the same fees for looking-up and taking an account of each former representation as on similar grants on which no stamp duty is payable.[1]

[1] As to these, see pp. 96, 97.

Double or Cessate Probates on which no Stamp Duty is payable.

If Effects sworn under	Looking-up and taking an Account of each Former Grant.		Oath of the Executor.		Affidavit for Inland Revenue Office.		Double or Cessate Probate under Seal.		Clerks.	
£	s.	d.	s.	d.	s.	d.	s.	d.	s.	d.
5	2	6	2	6	2	6	1	0	—	
20	2	6	2	6	2	6	1	0	1	0
100	5	0	5	0	5	0	1	0	2	0
200	5	0	6	6	5	0	3	0	2	0
300	5	0	6	6	5	0	7	6	2	0
450	5	0	6	6	5	0	12	0	2	0
600	5	0	6	6	5	0	12	6	2	0
800	5	0	6	6	5	0	12	6	2	0
1,000	5	0	6	6	5	0	12	6	2	0
1,500	5	0	6	6	5	0	12	6	5	0
2,000	5	0	6	6	5	0	12	6	5	0
3,000	5	0	6	6	5	0	12	6	5	0
4,000	5	0	6	6	5	0	12	6	5	0
5,000	5	0	6	6	5	0	12	6	7	6
Above 5,000	Fees to be taken same as above, except fee for clerks, which, if effects are of value of £70,000 or upwards, is 21*s*.									

Exemplification of Probate or Letters of Administration.

	s.	d.
Looking-up grant of probate and original will, or grant of administration (with or without will annexed)	5	0
Exemplification under seal, in addition to £3 stamp	15	0
Clerks	2	6

Duplicate and Triplicate Probates, or &c.

	s.	d.
Looking-up will	5	0
Duplicate or triplicate probate or letters of administration, with or without will annexed, or probate of codicil to will already proved, or letters of administration (with same annexed), if personal estate sworn under £450, or any smaller sum, same fees as on original grant.		
If personal estate of value of £450 and upwards .	12	6
Clerks	2	6

Letters of Administration with or without Will annexed De bonis non or Cessate on which no Stamp Duty is payable.

If Effects sworn under	Looking-up and taking Account of each Former Grant.		Oath of Administrator and Bond.		Affidavit for Inland Revenue Office.		De bonis or Cessate Administration under Seal and Duty-paid Stamp.		Clerks.	
£	s.	d.	s.	d.	s.	d.	s.	d.	s.	d.
5	2	6	2	6	2	6	1	0	—	
20	2	6	4	0	2	6	1	0	1	0
50	3	6	6	0	3	0	1	6	2	0
100	5	0	7	6	5	0	3	0	2	0
200	5	0	10	0	5	0	4	6	2	0
300	5	0	10	0	5	0	12	0	2	0
450	5	0	10	0	5	0	12	6	2	0
600	5	0	10	0	5	0	12	6	2	0

If effects £600 and upwards, same fees as above, except fee for clerks, 5*s*.

	s.	d.
Instructions for oath, affidavit, instrument, or document, other than oaths and affidavits and instruments of renunciation included in foregoing fees	5	0
Drawing same, per folio of 72 words . .	1	0
Copies of documents prepared in department for personal applications,[1] not included in foregoing fees, per folio of 72 words	0	6
Instructions for special or limited probates, or letters of administration (*with or without will annexed*)	5	0
Attendances on settling oaths for special or limited grants	10	0
All other fees to be taken the same as for ordinary grants.		
Perusing and settling oaths, affidavits, and other instruments and documents not drawn in department for personal applications,[2] if 6 folios of 72 words or under	1	6
Exceeding 6 folios, per folio of 72 words .	0	3
Perusing and abstracting deeds, or other instruments when necessary, per folio of 72 words[3] .	0	3
Administering oaths, or taking affirmations, other than those included in foregoing fees, each deponent[3]	1	0
Marking exhibit[3]	1	0

[1] *Sic* in official copies, but it would seem that *district registry* should be substituted in the case of a district registry.

[2] In the case of a district registry, for "department" substitute *district registry*.

[3] In the case of a district registry these items do not occur as here given, but see previous items as to oaths and perusing.

	s.	d.
Attesting execution of bond other than bond of widow or children of intestate included in former fees[1]	1	6
If not completed on one occasion, for each subsequent attestation[1]	1	0
Giving additional security in addition to above fees and fees for preparing new bond :—		
Looking-up original or former bond[1] . .	5	0

[1] In the case of a district registry these items do not occur.

APPENDIX D.

ADDITIONAL FORMS.[1]

Executor's Oath, on proving Copy of Will.[2]

(*Title and commencement as at p.* 63; *then*) A. B., late of , deceased, died on the day of , 18 , at , having made and duly executed his last will and testament, bearing date the day of , and thereof appointed me, the said C. D., sole executor:

And I further make oath and say, that at the time of the death of the said deceased the said will was whole and unrevoked, and in the same state as when executed, but that the said will has since been lost, or so mislaid that the same cannot now be found:

And I further make oath and say, that shortly after the death of the said deceased a copy of the said will was made by , of , solicitor, at my request, and the same was by him examined with the original and found to agree therewith:

And I further make oath and say, that I believe the paper writing hereto annexed and marked by me to contain the true last will and testament (the same being the aforesaid copy thereof) of the said testator; that I am the sole executor named in the said will, and that I will well

---

[1] A few forms, of a less common character than those given at pp. 60–76, are given here as being likely to be useful to legal practitioners.

[2] This may be adapted to the case of a draft of a will.

and faithfully administer the personal estate of the said testator, until the said original will or a more authentic copy thereof shall be brought into and left in the principal registry of this Division (by paying, &c., *as in "Executor's Oath, Ordinary," p.* 63, *omitting* "that the testator . . . . 18 ; *jurat as at p.* 63).

Executor's Oath : Limited to Property in Funds.[1]

(*Title and commencement as at p.* 63; *then*) the said A. B., late of , deceased, died at , on the day of , having made and duly executed his last will and testament, bearing date the day of , 18 , limited to his effects in the English funds, and thereof appointed an executor in the words following:—"I appoint, name, and institute as sole executor and administrator of all effects which I may at my decease possess in the public funds chargeable on the kingdom of England, in Great Britain, C. D., of ."

And I further make oath and say, that I believe the paper writing hereto annexed and marked by me to contain the true and original last will and testament of the said A. B., deceased; that I am the sole executor named in the said will, and that I will well and faithfully administer the personal estate of the said testator, limited to such as is in the English funds (by paying, *&c., as in last preceding form, inserting* limited as aforesaid *after* "estate;" *jurat as at p.* 63).

Executor's Oath : "Save and except."

(*Title and commencement as at p.* 63) the said A. B., late of , deceased, died at , on the day of , 18 , having made and duly executed his last will and testament, bearing date the day of

[1] This may be adapted to other kinds of specified property.

18 , and therein named his son, me the deponent, executor, save and except as regards all freehold, copyhold, leasehold and personal estates, hereditaments, money, securities for money and premises whatsoever vested in him upon or for the trusts or purposes of the last will and testament of E. F., late of , deceased:

And I further make oath and say, that I believe the paper writing hereto annexed and marked by me to contain the true and original last will and testament of the said A. B., deceased, and that I am the executor therein named as aforesaid, and that I will well and faithfully administer the personal estate of the said testator, save and except so far as relates to all freehold, copyhold, leasehold and personal estates, hereditaments, money, securities for money and premises whatsoever vested in him upon or for the trusts or purposes of the will of the said E. F., deceased, by paying his just debts and the legacies contained in his will so far as the same shall thereto extend and the law bind me; that I will exhibit a true and perfect inventory of all and singular the said estate and effects, save and except as aforesaid, and render a just and true account thereof whenever required by law so to do; and that the whole of the personal estate of the said testator, under the exceptions aforesaid (*continue as in "Executor's Oath, Ordinary," p.* 63; *jurat as at p.* 63).

Executor's Oath: Cessate Probate after Attorney.

(*Title and commencement as at p.* 63; *then as in "Executor's Oath, property not covered," p.* 65, *to* "sole executor;" *then*)

And I further make oath and say, that on the day of , 18 , letters of administration with the said will annexed of all and singular the personal estate of the said deceased were by authority of this Division granted to E. F. as the lawful attorney and for the use and benefit of me this deponent, who was then residing

at[1] , and until I should duly apply for and obtain probate of the said will to be granted to me (as by the acts and records now remaining in the probate or principal registry thereof appears):

And I further make oath and say, that since the premises I have returned to, and am now resident in, England.

And I further make oath and say, that I believe the parchment exhibit hereunto annexed, partly written and partly printed, and marked by me, to contain the true last will and testament of the deceased, that I am the sole executor named in the said will, and that (I will well and faithfully, &c., *as in "Executor's Oath, Ordinary," p.* 63; *omitting* that the testator . . . . 18 ; *jurat as at p.* 63).

Administrator's Oath: Attorney of Executor.[2]

(*Title and commencement as at p.* 63; *then as in "Executor's Oath, property not covered" to* "18 "[3]; *then*) and thereof appointed E. F. sole executor, who now resides at[4] .

And I further make oath and say, that I am the lawfully appointed attorney of the said E. F., as in and by a letter or power of attorney under the hand and seal of the said E. F. will more fully appear:

And I further make oath and say, that I believe the paper writing hereto annexed and marked by me to contain the true and original last will and testament of the said deceased; and I will well and faithfully administer the personal estate and effects of the said deceased

---

[1] Some place out of England, see p. 53.

[2] This form can be adapted to the case of an attorney of a person entitled to administration.

[3] *I.e.*, the *second* time that "18" occurs.

[4] Some place out of England, see p. 53.

for the use and benefit of the said E. F., and until he shall duly apply for and obtain probate of the said will to be granted to him, by paying the just debts of the said deceased and the legacies contained in his will (and distributing, *&c., as in "Administrator's Oath: Wife," p. 67, omitting* that the said deceased . . . . 18 ; *jurat as at p. 63*).

Power of Attorney to obtain a Grant.

Whereas A.B., late of deceased, died on the day of 18 at intestate,[1] leaving surviving him C. D. his lawful widow and relict:

Now I, the said C. D., the lawful widow and relict of the said A. B., at present residing at ,[2] hereby nominate, constitute and appoint E. F. of to be my lawful attorney for the purpose of obtaining letters of administration of all and singular the personal estate and effects of the said A. B., deceased, to be granted to him by the High Court of Justice for my use and benefit, and until I shall duly apply for and obtain letters of administration of the personal estate and effects of the said deceased to be granted to me; and I hereby promise to ratify and confirm whatever my said attorney shall lawfully do or cause to be done in the premises.

In witness whereof I have hereunto set my hand and seal this day of in the year of our Lord 18 .

Signed, sealed and delivered }
in the presence of }

Administrator's Oath, under 20 & 21 *Vict.* c. 77, *s.* 73.

(*Title and commencement as at p.* 63; *then as in "Executor's Oath: Property not covered,"* p. 65, *down to* and

[1] This can easily be adapted to the case of a testator.

[2] Some place out of England, see p. 53.

therein named, *then*) E. F. of sole executor and residuary legatee, who is now resident out of the United Kingdom of Great Britain and Ireland.

2. I am a creditor of the said deceased.

3. On the day of 18 the Right Honourable Sir James Hannen, Knight, President of this Division, on motion of counsel, appointed me this deponent to be the administrator with the said will annexed of all and singular the personal estate and effects of the said deceased under and by virtue of the 73rd section of the Court of Probate Act, 1857.

4. I believe the paper writing hereto annexed and marked by me to contain the true and original last will and testament of the said deceased; (I will well and faithfully, *&c.*, *as in* "*Administrator's Oath: Wife,*" *p.* 67, *omitting* that the said 18 : *jurat as at p.* 63).

Administrator's Oath: Pendente Lite.

(*Title and commencement as at p.* 63; *then*) the said A.B., late of , deceased, died at on the day of having as asserted made his will, bearing date the day of but did not thereof appoint any executor:

And I further say, that there is now depending in judgment in the aforesaid Division a certain action (*numbered and lettered as may be*) entitled (*title of action*) and concerning the validity of the said will;[1] and I further make oath that I will faithfully administer the personal estate of the said deceased, pending the said action, save distributing the residue thereof, under the directions and control of this Division (that I will exhibit, *&c.*, *as in* "*Administrator's Oath: Wife,*" *p.* 67, *omitting* that the said deceased . . . . 18 ; *jurat as at p.* 63).

---

1 Here recite order appointing C.D. administrator.

Administrator's Oath: Guardian, durante minore aetate

(*Title and commencement as at p.* 63; *then*) the said A. B., late of , deceased, died on the day of , 18 , at , a widower and intestate, leaving E. F., his natural and lawful and only child and only next-of-kin him surviving, who is now in his minority, to wit, of the age of twenty years and upwards, but under the age of twenty-one years.[1]

And I further make oath and say (*deponent here describes his appointment as guardian by the father, by the Court, or by election*).

And I further make oath and say, that I am the guardian of the said minor, duly appointed by (*as the case may be*); that I will faithfully administer the personal estate of the said deceased for the use and benefit of the said E. F., until he shall attain the age of twenty-one years,[2] by paying the just debts of the said deceased, (and distributing, &c., *as in "Administrator's Oath: Wife," p.* 67; *omitting* "that the said deceased . . . . 18 "; *jurat as at p.* 63).

If there be more than one minor, enumerate the ages, and insert *severally* after "*but.*"

[2] If several minors, *said E. F., &c., until one of them shall attain, &c.*

INDEX.

N.B.—*Cases referred to in the book will be found under the title* CASES; *Forms of Oaths, &c., under* FORMS; *Acts of Parliament under* STATUTES.

N.B.—For brevity, the word "grant" is frequently used in this Index in the sense of grant of letter of administration.

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[1] Wherever a surname stands alone, the reader must supply the words *In the goods of*; thus, for "Adamson," read *In the goods of Adamson.*

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